STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL (DHCR)
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO.: KS910015RO
GHAITH ANNABI,	RENT ADMINISTRATOR'S DOCKET NO: GP910021R
PETITIONER	TENANT: [redacted]

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The above-named owner filed a timely petition for administrative review (PAR) of an order issued on June 10, 2022 by the Rent Administrator (RA) concerning the housing accommodation known as apartment [redacted] at 14 Coyle Place, Yonkers, New York 10705.

The Commissioner has reviewed all of the evidence in the record and has carefully considered that portion of the record relevant to the issues raised by this PAR.

On April 6, 2018, the tenant filed a specific rent overcharge complaint stating that he moved into the subject apartment on May 18, 2015 with a lease setting forth a legal regulated rent (LRR) of $957 per month and a preferential rent (PR) of $800.00 per month and that the owner has increased his rent by 20% on the renewal lease commencing May 2018.

On June 22, 2018, the owner answered and submitted a copy of "PREFERENTIAL RENT AGREEMENT FOR Apt[redacted]" dated May 18, 2015, stating that the tenant's monthly LRR is $957.00 per month, but the tenant is only paying a monthly PR of $800.00.

The tenant submitted a reply stating that there was no such PR agreement on the past leases.

On November 24, 2021, the RA served the petitioner a Final Notice to Owner – Imposition of Treble Damages on Overcharge based on the owner's failure to respond to requests for the rental history from April 6, 2014 and the failure to file annual registrations with DHCR for 2019 to 2021.

On December 16, 2021, the owner answered the Final Notice alleging that he purchased the property on May 5, 2017 and he denied any overcharge. The owner submitted proof of annual registrations for the subject apartment from 2019 to 2021.

The RA granted the tenant's complaint. Based on the specific complaint filed, the base date rent was determined from the lease expiring in May 2017 and was found to be $814.00 per month. There was an overcharge from June 1, 2018 through March 2020 of $2,966.92 because the LRR was $822.14 per month while the tenant paid $957 per month during this period. When adding $5,933.64 in treble damages, the total owed to the tenant was $8,900.76.

In the PAR, the owner contends that the RA ignored its answer to the tenant's application; that the LRR is $957.00 per month as shown in the rider of the May 18, 2015 – May 17, 2016 Vacancy Lease signed by the tenant; that the LRR was stated in the renewal lease of May 2018; that because the previous owner did not willfully overcharge the tenant in that lease, neither has the petitioner; and that treble damages are inappropriate.

The PAR is denied.

While the owner preserved a LRR of $957 per month in the tenant's vacancy lease, said LRR was waived in the next two renewal leases commencing May 2016 and May 2017, respectively. Both renewal leases only stated the rent of $814.00 per month. The RA correctly used that amount as the base date rent and found that the owner improperly tried to re-introduce the higher LRR of $957 per month in the May 2018 renewal lease. Once waived that LRR could not be restored in 2018. See generally Emergency Tenant Protection Act (ETPA) §2501.2.

ETPA §2506.1 states, in pertinent part, that overcharges are subject to treble damages unless the owner can rebut the presumption of willfulness. The owner has made no such case herein by a preponderance of the evidence. The fact that the owner purchased the premises in 2017 and was not responsible for the waiver of the LRR in the 2016 and 2017 renewal leases is not a defense. Thus, treble damages are sustained. See ETPA §2506.1 (f).

THEREFORE, in accordance with the Emergency Tenant Protection Act and regulations, it is

ORDERED, that this petition be, and the same hereby is, denied, and that the Rent Administrator's order is affirmed.

ISSUED:

JAN 09 2023

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party, only by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review. The deadline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order. This 60-day deadline for appeal may be extended by executive orders at https://governor.ny.gov/executiveorders. No additional time can or will be given. In preparing your papers, please cite the Administrative Review Docket Number which appears on the front page of the attached order. If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR). With respect to DHCR, your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York, NY 10022.

There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL (DHCR)
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW DOCKET NO.: KT210015RO

Marine Equities 101, LLC

PETITIONER

RENT ADMINISTRATOR'S DOCKET NO: GU210029R

TENANT: [redacted]

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ORDER AND OPINION GRANTING PETITION FOR ADMINISTRATIVE REVIEW

The above-named owner filed a timely petition for administrative review (PAR) of an order issued on July 22, 2022 by the Rent Administrator (RA) concerning the housing accommodation known as apartment [redacted] at 101 Lincoln Rd., Brooklyn, NY 11225.

The Commissioner has reviewed all of the evidence in the record and has carefully considered that portion of the record relevant to the issues raised by this PAR.

On September 13, 2018, the tenant commenced this rent overcharge proceeding with a complaint stating that he moved into the apartment on January 1, 2016 with a one-year lease at a monthly rent of $2,200.00; that his current monthly rent is $2,244.00; and overcharges occurred as a result of a rent increase from individual apartment improvements (IAIs).

In answer, the owner admitted to overcharges and refunded the tenant $19,903.90.

On February 17, 2022, DHCR sent a letter to the tenant, requesting confirmation if this refund was given and if the tenant cashed the check. This was confirmed.

On February 22, 2022, the RA served the petitioner a Final Notice to Owner – Imposition of Treble Damages on Overcharge based on the evidence in the record that a service reduction order under Docket Number CM230029B issued on July 27, 2015 and effective on April 1, 2014 caused overcharges. As a result of the rent freeze caused by the service reduction order, the Final Notice worksheet indicated an overcharge from January 1, 2016 through September 30, 2018 and an excess security deposit in the total amount of $93,802.03.

On April 8, 2022, the owner responded to the Final Notice stating that it refunded another $34,858.06 to the tenant. The owner provided a copy of the canceled check.

The RA found that the base date herein is September 13, 2014, the date four years prior to the filing of complaint and that the base date Legal Regulated Rent (LRR) is $836.98 per month. The RA found that the owner was entitled to a vacancy, longevity and IAI rent increase resulting in a LRR of $1,739.38 per month on January 1, 2016. However, the collectible rent was frozen at $776.78 based on the service reduction order. The collectible rent was restored on December 1, 2017. There were additional overcharges from January 1, 2020 through March 31, 2022 based upon a rent freeze cause by the owner's failure to register the apartment from 2019 – 2021. The RA directed the owner to refund to the tenant $47,704.56 ($40,166.47 overcharge + $54,714.98 treble damages + $7,205.05 interest + $380.02 excess security = $106,486.52 subtotal - $54,761.96 refund made.

In the PAR, the owner contends that treble damages should not have been imposed.

The Commissioner, having reviewed the record herein, finds that the petition should be granted, and the RA's Calculation Chart should be modified accordingly.

Rent Stabilization Code (RSC) §2526.1(a)(1) provides that any owner who is found to have collected an overcharge "...shall be liable to the tenant for a penalty equal to three times the amount of the overcharge. If, however, the owner establishes by a preponderance of the evidence that the overcharge was not willful, the agency shall establish the penalty as the amount of the overcharge plus interest."

Given that this complaint was filed before the passage of the Housing Stability and Tenant Protection Act of 2019 (HSTPA), DHCR Policy Statement 89-2 shall apply herein. Said Policy Statement provides that an owner shall establish lack of willfulness of overcharges if it refunds the overcharges and interest to the tenant within the time to answer the complaint and adjusts the rent.

The Commissioner finds that treble damages should not be assessed against the petitioner based on this evidentiary record. Notwithstanding that the petitioner did not tender a full refund to the tenant within the time to answer the complaint, the particular facts in this case warrant a finding that the overcharge was not willful. The petitioner ultimately refunded $54,761.96 to the tenant before the Rent Administrator issued his order. Given that the service reduction had been restored in 2017, there is no issue concerning adjustment of the rent during the RA proceeding. While the refund was slightly less than the total overcharge and interest, the Commissioner finds that this was due to additional overcharges and interest mounting up to the issuance date of the underlying order. However, the petitioner made a good faith attempt to calculate the overcharge and interest and issued a significant refund to the tenant. Given the refunds, the Commissioner finds that the lack of willfulness has been established and that the RA erred in assessing treble damages. Interest on the entire overcharge up to the date of issuance of the RA order should have been assessed. The RA Calculation Chart for overcharges is herein modified as follows:

Overcharge Amount:	$40,166.47
Treble Damages Amount:	$0.00
Interest Amount:	$19,148.72
Excess Security Amount:	$380.02
Subtotal:	$59,695.21
-Refund:	$54,761.96
Total Amount Due Tenant	**$4,933.25**

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition be, and the same hereby is, granted, and that the Rent Administrator's Calculation Chart is modified as hereinabove stated.

ISSUED:

JAN 12 2023

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW
DOCKET NO.: KX210009RO

RENT ADMINISTRATOR'S
DOCKET NO.: KP210001RK

647 PROSPECT LLC.

TENANT: [redacted]

_____PETITIONER X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The above-named petitioner-owner timely filed an administrative appeal (PAR) against an Order issued on September 22, 2022, by the Rent Administrator (RA), concerning the housing accommodation known as Apartment [redacted] located at 647 Prospect Place, Brooklyn, NY, 11216, which Order determined that the total amount due tenant should be $135,371.51, reflecting overcharges collected and treble damages or interest on the appropriate portions of said overcharges.

On June 1, 2017, the tenant filed a rent overcharge complaint alleging that the monthly rent of $2,364.78 charged and collected by the owner constituted as an overcharge. On January 1, 2014, the RA issued Order FR210005R, which Order determined that the base date for this proceeding is June 1, 2011, which was six years prior to the filing of said complaint. Order FR210005R also determined that the total amount due to the tenant is $170,080.92, reflecting overcharges collected and treble damages on the entire overcharge.

Thereafter, the owner filed a request to reconsider Order FR210005R, which led to the issuance by the RA of a subsequent Order on September 22, 2022, under Docket Number KP21001RK. Order KP210001RK found that Order FR210005R should be revoked, determined that the base date for this proceeding is June 1, 2013, which is four years prior to the filling of the complaint, established the base date rent at $888.74 per month based on a prior overcharge Order issued on November 26, 2014 under Docket Number CU210009R, and further determined that the total amount due tenant is $135,371.51, as outlined above.

On October 21, 2022, the owner filed a PAR under Docket Number KV210027RO. Said PAR was rejected without prejudice because the owner did not file its PAR on Form RAR-2 as required. The owner refiled its PAR, which PAR is the subject of this Order.

On PAR, the owner contends that the RA erred in finding rent overcharges and improperly applied treble damages to portions of said overcharges; that the legal regulated rent (LRR) on the base date rent should be the rent charged and paid on the June 1, 2013 base date; that DHCR incorrectly established the base date LRR rent as $1,048.71 (sic) per month pursuant to previous overcharge Order CU210009R, issued on November 26, 2014, which Order established the LRR as $646.50 per month as of March 31, 2012; that March 31, 2012 precedes the base date by nearly two years; that overcharge orders, which are rental documents, are only reviewable within the four-year look back period; that the holding of Cintron v. Calogero, 15 N.Y.3d 347, 912 N.Y.S.2d 498 (2010) applies to rent reduction orders in service cases, and not to pre-base date overcharge orders; that the rent set by overcharge Order CU210009R is prior to the base date; that said Order is not analogous to an order freezing the rent prior to the base date because an overcharge order simply sets the rent and does not freeze the rent; that Cintron therefore only applies to rent reduction orders and not to overcharge orders like Order CU210009R; that the RA was incorrect to use Cintron as authority to ask for pre-base date rental history; and that, in accordance with the pre-Housing Stability Tenant Protection Act (HSTPA) rules in effect at the time when the rent overcharge complaint was filed, no imposition of treble damages should be applied because the overcharge is neither willful nor based upon fraudulent conduct.

The Commissioner, having reviewed the entire evidentiary record, finds that the owner's PAR should be denied.

Renaissance Equity Holdings, LLC v. New York State Division of Housing and Community Renewal Supreme Court of Kings County Index No: 525719/2021 [2021] holds that, even if an overcharge order was issued prior to the base date of a given proceeding, such "order, like the agency order at issue in *Cintron*, [is] appropriately made part of the reviewable rental history." Accordingly, even though the mandate of Agency Order CU210009R sets the LRR as of March 31, 2012, which is prior to the base date herein, said mandate, pursuant to Cintron and Renaissance, must be followed. It is noted that overcharge Order CU210009R was issued on November 26, 2014, almost a year and a half *after* the base date of June 1, 2013 in this case, and is therefore within the four-year reviewable lookback time-period pursuant to Section 2526.1 of the Rent Stabilization Code (RSC). Accordingly, said Order is, even without Cintron and Renaissance, reviewable, and its mandate must be considered and followed, even if it applies to a time prior to the base date. It is noted that the owner did not at any time roll back the rent pursuant to Order CU210009R.

The Rent Stabilization Law and Code, as well as DHCR Policy Statement 89-2, state that treble damages shall be imposed on the relevant part of an overcharge unless the owner can establish by a preponderance of the evidence that the overcharge was not willful. In this case, the owner has made no argument and presented no evidence to show that the overcharge was not willful, so the RA correctly imposed treble damages on the appropriate portion of the overcharges herein. It is noted that, as mentioned above, the owner at no time complied with the mandate of

overcharge Order CU210009R, which is affirmative evidence of the willfulness of the overcharges herein.

THEREFORE, in accordance with the applicable sections of the Rent Stabilization Law and Code, it is

ORDERED, that the petition is denied.

ISSUED:

JAN 1[illegible] 2023

WOODY PASCAL
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL (DHCR)
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO.: KV210014RT
[redacted]	RENT ADMINISTRATOR'S DOCKET NO: HN210074R
PETITIONER	OWNER: 634 Classon, LLC

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The tenant filed a timely petition for administrative review (PAR) against an order issued on September 8, 2022 by the Rent Administrator (RA) concerning the housing accommodation known as apartment [redacted] at 634 Classon Avenue, Brooklyn, New York 11238.

The Commissioner has reviewed all of the evidence in the record and has carefully considered that portion of the record relevant to the issues raised by this PAR.

In the order under review, the RA determined that the base date was February 21, 2015, which is the date four years prior to the filing of the complaint; that the base date rent was $1,514.26; that the owner was permitted to increase the rent to $2,478.71 when the tenant took occupancy on January 15, 2017; that the rent increase was based on an 18% vacancy allowance and $691.88 in Individual Apartment Improvement (IAI) increases; that subsequent to the base date, a rent overcharge occurred; and that the tenant was entitled to total damages of $1,863.84. The rent was computed through June 2019, when the tenant vacated the apartment.

On PAR, the tenant states: "I believe the error of fact to be that the owner showed and proved allowable IAI totaling $27,675.12."

The PAR is denied.

Pursuant to former Rent Stabilization Code (RSC) §2522.4(a)(1), an owner was entitled to a rent increase where there had been a substantial increase of the dwelling place or an increase in services or installation of new equipment or improvements or new furnishings provided in the tenant's housing accommodation. RSC §2522.4(a)(4) provided that an owner was entitled to collect 1/40th of the cost of the IAIs in a building such as the subject premises.

Here, the owner proved the IAIs by providing a contractor affidavit, an invoice for kitchen cabinets, an invoice for appliances and proof of payment totaling $27,675.26. The tenant did not set forth sufficient evidence to rebut the claimed IAIs. The claim that the costs of sheetrock and electrical wiring were inflated given the size of the apartment is not persuasive. Owners were not limited to use lowest cost estimates for contractors or vendors when performing IAIs. The photographs provided to the RA also do not rebut the IAI evidence submitted by the owner which comported with DHCR standards for such proof.

THEREFORE, in accordance with the relevant provisions of the Rent Stabilization Law and Code, it is

ORDERED, that the petition for administrative review be, and the same hereby is, denied, and that the Rent Administrator's order be, and the same hereby is, affirmed.

ISSUED:
JAN 23 2023

WOODY PASCAL
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL (DHCR)
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW
DOCKET NO.: KV410012RO

1781 Riverside LLC
Petitioner

RENT ADMINISTRATOR'S
DOCKET NO.: FP410077R

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TENANT: [redacted]

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner timely filed a petition for administrative review (PAR) against an order issued on October 12, 2022 by the Rent Administrator (RA) concerning apartment [redacted] at 1781 Riverside Drive, New York, NY 10034.

The Commissioner has reviewed all of the evidence in the record and has carefully considered that portion of the record relevant to the issues raised by this PAR.

The RA found in the order under review that on April 24, 2017, the tenant filed a rent overcharge complaint alleging that his current monthly rent of $951.02 charged and collected by the owner constitutes an overcharge; that the base date for this proceeding is April 24, 2013, the date four years prior to the filing of the complaint; that the base date legal and collectible rent was $885.57 per month; that overcharges occurred beginning December 1, 2015 as shown in the Rent Calculation Chart (annexed to the RA order); that the legal and collectible rent was $903.28 per month as of September 30, 2019; that the total overcharges with treble damages was $5,120.82; that rent arrears of $14,975.72 were applied as a refund against the total award; and that no money was owed to the tenant.

On PAR, the owner requests an explanation of the monthly legal rent of $903.28. The owner states that the RA did not explain why the owner could not charge the legal rent of $951.02 as of October 1, 2014 and that the legal rent should have been $970.04 per month as of October 1, 2017. The owner requests clarification of what the rent should be on future leases. The owner also states that the tenant has arrears of $4,963.79 as of October 2022.

The PAR is denied.

The RA Calculation Chart Footnotes indicate that the tenant was in occupancy as a month to month tenant from the base date until September 30, 2014 without a valid lease. As such, the legal and

collectible rent did not increase from the base date rent of $885.57 per month. Beginning on October 1, 2014, the RA stated that the rent *could have* been increased by the 2.75% applicable guideline increase, however, as explained in Footnote 3, although a lease was signed on October 1, 2014, the owner's rent ledger indicates that the owner waived such increase by billing the tenant $885.57 from October 1, 2014 through November 30, 2015. The owner could not begin collecting the guideline increase retroactively on December 1, 2015 (which began the overcharge period) and the legal and collectible rent remained at $885.57 until October 1, 2017. Moreover, as explained in Footnote 3, there was an Order granting the owner the right to amend a 2015 DHCR apartment registration by adding the lease period October 1, 2014-September 30, 2016 and changing the rent amount from $885.57 to $951.02. However, the DHCR Order granting the amended registration specifically states that it is "not a determination of the legal rent for the apartment" and thus the Commissioner finds that such order does not conflict with the RA's determination of a waiver in the order appealed herein.

The RA Calculation Chart goes on to clarify that the legal and collectible rent was the same beginning October 1, 2016 based on the applicable 0% guideline increase and then increased from $885.57 to $903.28 as of October 1, 2017 pursuant to a two-year 2% guideline increase, and the rent remained at that level through September 30, 2019, which is the date of the last rental payment on file (See Footnote 7). The owner's assertion that the rent should be $951.02 as of October 1, 2016 and $970.04 as of October 1, 2017 is based on the incorrect belief that the previous guideline increase (from 2014) was not waived or otherwise could be collected a year later. As far as future rent increases, Footnote 7 explains that the owner must base future rent increases on the rent of $903.28 with any renewal leases commencing on or after September 30, 2019. The Commissioner makes no finding on any alleged arrears after September 30, 2019.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition be, and the same hereby is, denied, and that the Rent Administrator's order, is affirmed.

ISSUED:

JAN 30 2023

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	:	ADMINISTRATIVE REVIEW DOCKET NO. KV410026RO
PWV Acquisition Owner, LLC,	:	RENT ADMINISTRATOR'S DOCKET NO. FT410081R
PETITIONER		TENANT: [redacted]

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW AND MODIFYING THE RENT ADMINISTRATOR'S ORDER

The above-referenced owner has filed this administrative appeal (PAR) against an order issued on September 22, 2022 by a Rent Administrator (RA) concerning the housing accommodations known as apartment [redacted] at 788 Columbus Avenue, New York, New York.

On August 18, 2017, the tenant filed a rent overcharge complaint challenging the legality of her rent of $2,625 per month and asserting that the apartment was unlawfully deregulated based on fraudulent rent increases in 2006 and 2011. The tenant took possession of the subject apartment on June 1, 2016 pursuant to a non-stabilized lease at a rent of $2,500 per month and the apartment had been registered as exempt from rent regulation since 2011.

In answer, the owner alleged that the premises was deregulated in 2010 when, following a vacancy and Individual Apartment Improvements (IAIs,) the rent increased to $2,456.53 per month. The owner stated that the tenant has set forth nothing more than mere allegations of fraud with no proof to support those allegations. The owner produced checks payable to construction vendors as well as a construction invoice from 2005.

On July 1, 2022, the RA requested that the owner provide evidence of claimed IAIs that were performed "immediately prior to deregulation."

In response, the owner asserted that it is not required to provide pre-base date records concerning the deregulation; that it provided records already (the records from 2005); and that the tenant has not alleged a viable claim of fraud.

The RA sent the owner a Treble Damage Notice stating that damages would be assessed based on the owner's failure to register the apartment since 2014.

The owner responded that it has previously submitted evidence that the apartment was deregulated in 2010 and that there is no evidence of fraud.

The RA found that the base date for this proceeding was August 18, 2013, the date four years prior to the filing of the complaint; that the base date rent was $2,150 per month based on a vacancy lease for a prior tenant; that the collectible rent was "frozen" for failure to register the premises, as of April 1, 2014, at $2,100 per month resulting in overcharges for the complainant's entire tenancy (the tenant vacated the apartment as of July 31, 2018); that the subject accommodations "remain under [the] Rent Stabilization Law"; and that after trebling of the overcharges "because the owner has not established that [they] were not willful," the owner is liable in the amount of $34,500.

On PAR, the owner asserts that the RA erred in considering rental events preceding the aforementioned base date; and that it is "undisputed" that the subject unit "exited rent stabilization in the year 2010," leaving "no obligation to file registration statements from the year 2011 forward."

The PAR is denied, and the RA order is herein modified.

Prior to the Housing Stability and Tenant Protection Act (HSTPA) of 2019 and before the Court of Appeals ruling in Regina Metropolitan LLC v DHCR, 35 N.Y.3d 332, 130 N.Y.S.3d 759 (2020), the agency was permitted to review rental events prior to the base date to determine whether an apartment was subject to the Rent Stabilization Law and Code. See RSC §2526.1(a)(2)(iii) and East West Renovating Co. v. DHCR, 16 A.D.3d 166 (1st Dept. 2005). A review of such records was permissible even in the absence of evidence of a colorable claim of fraud.

The RA specifically requested proof that the apartment was deregulated in 2010-2011 based on IAIs completed at that time. Instead, the owner produced records dating back to 2005-2006 when, according to apartment registrations, the rent increased from $569.42 per month to $1,430.19 per month. No records were produced to establish an increase from the registered rent of $1,651.22 per month in 2010 to a rent in excess of the deregulation threshold in 2011.[1] The Commissioner notes that deregulation would not have been achieved based on the statutory vacancy increase alone.

Based on the lack of evidence that the apartment was legally deregulated in 2010-2011, the RA properly set the base date rent as the rent charged and paid as of the lease in effect August 2013. Given the fact that the apartment was not deregulated, the owner was responsible for filing apartment registrations as of April 1, 2014 and beyond. The RA order in sum takes cognizance of a failure to file resulting in a rent freeze which the owner was or should have been aware of.

The Commissioner notes that the RA found increases to the legal rent subsequent to the base date based on three vacancies, including the vacancy which led to the complainant's occupancy in 2016. While the legal rent level had surpassed the vacancy decontrol threshold as of June 1, 2016, the RA properly found that the owner could not deregulate the apartment because of the rent freeze and the fact that the owner could not legally collect the deregulated rent amount.

The Commissioner finds that the RA erred in assessing treble damages on the overcharge because the entire overcharge was based solely on the rent freeze due to the failure to register. See RSC §2526.1(a)(1). Therefore, treble damages are eliminated, and interest is accrued and assessed on the overcharge up to the date of issuance of the RA order.

Overcharge:	$11,500.00
Interest:	$5,446.89
Treble Damages:	$0.00
Amount owed:	**$16,946.89**

[1] The deregulation threshold increased from $2,000 per month to $2,500 per month as of June 24, 2011.

THEREFORE, in accordance with the relevant rent-regulatory laws and regulations, it is

ORDERED that the PAR is denied, and the RA order is modified as determined herein.

ISSUED:

JAN 31 2023

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party, only by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review. The deadline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order. This 60-day deadline for appeal may be extended by executive orders at https://governor.ny.gov/executiveorders. No additional time can or will be given. In preparing your papers, please cite the Administrative Review Docket Number which appears on the front page of the attached order. If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR). With respect to DHCR, your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York, NY 10022.

There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW
DOCKET NO.: KR410011RO

RENT ADMINISTRATOR'S
DOCKET NO.: FQ410081R

19 SEAMAN LLC

TENANT: [redacted]

PETITIONER X

ORDER AND OPINION GRANTING PETITION FOR ADMINISTRATIVE REVIEW AND MODIFYING RENT ADMINISTRATOR'S ORDER FQ410081R

The petitioner-owner timely filed a Petition for Administrative Review (PAR) of an Order issued by the Rent Administrator (RA) on May 12, 2022, concerning the housing accommodation know as apartment [redacted] at 19 Seaman Avenue, New York, NY 10034.

The RA's Order at issue herein found that the base date for this proceeding is May 23, 2013, which is the date four years prior to the filing of the complaint initiating this proceeding; that, subsequent to May 23, 2013, rent overcharges occurred; that the owner must refund said overcharges plus treble damages and excess security held by the owner; that the owner must base future rents on the rent established by said Order; and that the owner must amend all apartment registration(s) for the years commencing after the base date for this proceeding to reflect the findings and determinations of said Order.

On PAR, the petitioner alleges that the treble damages awarded in this proceeding are unwarranted; that, upon owner's receipt of the Agency's Final Notice to Owner – Imposition of Treble Damages on Overcharge (Treble Damage Notice), the owner issued a credit to the tenant in the amount of $1,663.46; that the owner adjusted the tenant's rent pursuant to its calculations; that the owner refunded overcharges and interest, and notified DHCR of this refund prior to the issuance of the RA's Order at issue, which is sufficient to rebut the

presumption of the willfulness of the overcharges and eliminate treble damages (citing Policy Statement 89-2 (PS 89-2)); that PAR Order FP610008RO involved an owner who refunded overcharges and interest and adjusted the rent after receipt of the Treble Damage Notice in that case (which facts are the same as the facts herein), and said owner succeeded on PAR in having treble damages eliminated based on said refund and adjustment; that the owner's conduct herein was not willful but was, rather, a good faith mistake; that the only violation of the Rent Stabilization Law or Code (RSL or RSC) is due to the good faith mistake that the owner made in attempting to preserve an appropriate legal rent; that the owner has other apartments in the building at higher rents, and, if the owner had calculated the initial rent based on comparable apartments, the tenant's initial rent would have been in excess of $2,500.00 which would have destabilized the apartment; that the owner's charging of a much lower initial stabilized rent shows that any overcharge was not willful; that the tenant did not make any rent payments during the course of the underlying proceedings; that, based on this fact, no monies should be refunded to the tenant; and that Agency Order GT210014RT, issued on March 4, 2019, holds that a tenant's non-payment of rent has the same effect as if the owner were to have adjusted the rent and offered a refund under DHCR policy statement 89-2.

In its response to the PAR, the tenant alleges that the owner did not submit sufficient evidence to the RA to rebut the presumption that the overcharge was willful; that the owner sought a 50% vacancy increase from the tenant when she signed her lease for the apartment; that the owner is blaming the leasing agent for the failure to charge the proper legal rent; that the owner falsely claimed that the legal regulated rent should be based on individual apartment improvements (IAIs) and a longevity increase; that, even though the owner argued that the rent was based on a "first rent", the owner was found to still be overcharging the tenant based on unlawful increases after the first rent was set; that the credit of $1,663.46 issued by the owner failed to rebut the presumption of willfulness; that the credit was not offered until April 6, 2021, which was after the complaint was filed; that Order GT210014RT is not analogous because the tenant in that case was reimbursed within the time required by PS 89-2; that the tenant's rent arrears in the instant case have no effect on the refund because the owner's time to adjust the rent under PS 89-2 had already elapsed when said arrears began to accrue; and that the owner should be required to pay an additional $1,500.00 in attorney's fees based on the work done by the tenant's attorney on the instant PAR.

The owner filed a response to the tenant's answer, repeating allegations made on PAR, and additionally alleging that the tenant did not provide any support for her statement that the owner did not rebut the presumption that the overcharge was willful; that it submitted evidence of an appropriate rent adjustment so treble damages are not applicable; that the tenant tries to distinguish this matter from PAR proceeding GT210014RT by pointing to the time that arrears began in that case (which was from when the complaint was filed), arguing that it is not analogous to the instant case in which arrears did not begin until September of 2020 (more than three years after filing the complaint at issue herein); that, regardless of such tenant allegation, the refund in the instant case was made in full compliance with the holding of PAR Order FP610008RO, outlined above; that the tenant has presented no evidence that the owner's actions were willful; and that the owner has complied with PS 89-2 as well as with relevant case law providing for the rebuttal of the presumption of the willfulness of the overcharges herein.

The Commissioner, having reviewed the evidence in the record, finds that the petition must be granted and the RA's Order at issue must be modified.

RSC §2526.1(a)(1) provides that overcharges are presumed to be willful and shall be subject to treble damages unless an owner can rebut the presumption of willfulness. Policy statement 89-2 (PS 89-2) provides that the presumption of the willfulness of overcharges may be rebutted, and treble damages will not be imposed, when the owner adjusts the rent and gives the tenant a refund of all excess rent collected plus interest.

In this case, it is uncontested that, after receipt of the Treble Damage Notice, and prior to issuance of the RA's Order at issue, the petitioner adjusted the rent and also gave the tenant a rent credit that was greater than the total of the overcharges plus interest. These facts are identical to the facts of prior Agency Order FP610008RO, in which the treble damages imposed by the RA in that case were removed based on a finding on PAR that the owner in that case had reduced the rent and made a refund of overcharges plus interest after receipt of the Treble Damage Notice and prior to issuance of the RA's Order in that case. Therefore, pursuant to DHCR Policy Statement 89-2, and Agency Order FP610008RO, the owner has rebutted the presumption of the willfulness of the overcharges in the instant case, and treble

damages are not warranted. The award to the tenant is therefore recalculated, without treble damages, and with interest as required by law when treble damages are not imposed, and as follows:

Overcharge Amount:	$1,214.93
Treble Damages Amount:	$ 0.00
Interest Amount:	$ 363.40
Excess Security Amount:	$ 33.77
Subtotal:	$1,612.10
Minus Refund (Rental Credit):	$1,663.46
Total Due Tenant	$0.00

Regarding the issue of attorney's fees, the award of attorney's fees set forth in the RA's Order at issue remain as set forth in such Order, and the petitioner is directed to pay such fees to the tenant. The Commissioner finds, however, that the tenant's request for additional attorney's fees on PAR cannot be granted due to the tenant's failure to submit documentation substantiating such fees.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition is granted, that the Rent Administrator's Order is modified in accordance with this Order, and that the Rent Administrator's order is, in all other respects, affirmed.

ISSUED:
FEB 02 2023

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF

RATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

Halil Canovic

ADMINISTRATIVE REVIEW
DOCKET NO.: KV210003RO

RENT ADMINISTRATOR'S
DOCKET NO.: GT210015R

[redacted]

PETITIONER X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner filed a timely petition for administrative review (PAR) of an Order issued on September 7, 2022, by a Rent Administrator (RA) concerning [redacted] at 70 Powers Street, Brooklyn, NY 11211. The RA's Order that is the subject of this PAR found that, based on the finding of Agency Order ET210030AD, issued on January 3, 2017, the apartment at issue is subject to rent stabilization; that the owner must file annual apartment registrations from 2015; that the rent is frozen at the lawful stabilized rent of $1,598.63 per month in effect on 4/1/15 due to owner's failure to properly file annual registrations from 2015; that rents may be restored upon proper filing of annual registrations; and that the owner must offer the tenant a proper renewal lease.

On PAR, the owner alleges that the current owner purchased the premises in 1998; that, prior to 4/27/86, the premises contained six residential units and were subject to rent stabilization; that, on 4/27/86, the premises was vacant and free of tenants, at which time the prior owner substantially rehabilitated the premises, including more than 75% of the existing structure, which was at that time in a dilapidated condition as no work had been performed in the premises since 1913; that said rehabilitation included a gutting of the premises, installation of

new heating, plumbing and electrical systems throughout the building, replacement of all walls and floors, installation of all new windows, installation of new bathrooms and kitchens throughout, relocation and installation of a new bathroom on the first floor, and a combination of [redacted] into a single unit; that, on 3/25/98, eight months before the current owner purchased the premises, the NYC Department of buildings (DOB) issued a new certificate of occupancy (CO) for the premises permitting lawful use as a five family residential dwelling; and that, upon issuance of the new CO, which converted the premises from a six unit dwelling to a five unit dwelling, any tenant taking occupancy after that date was not subject to rent stabilization, which is why, from that date forward, the prior owner stopped registering the building with DHCR.

The owner further alleges that, on 6/26/18, it submitted a Request for Administrative Determination (AD) asking that the Agency find that the premises are permanently exempt from rent stabilization since 1986 due to substantial rehabilitation; that all rehabilitation work was completed in 1986, and, upon issuance of a new CO converting the premises to five units, the premises were no longer subject to stabilization; that, although the owner's AD application was not docketed, on 8/16/18, this Agency issued a Request for Form RS-3, and, on 9/10/18, the owner complied and delivered the requested forms; that, shortly thereafter, in apparent retaliation to owner's AD, the tenant file an overcharge complaint and a lease violation complaint (the complaints at issue herein); that, on 9/6/18, the owner responded to both complaints advising this Agency of the pending AD application; that, on 7/17/19, the owner received an Order Terminating Proceeding, which consolidated the two above-referenced complaints under Docket Number GT210015R; that, on 8/5/19, the owner responded and requested that all proceedings under GT210015R be stayed until resolution of the owner's above-referenced AD; and that the Agency has not addressed said owner request.

The owner also alleges that the matters at issue herein must be stayed until determination of the owner's AD, because, if it is granted, the tenant's complaints herein would be moot; that the tenant would not be prejudiced by the granting of such a stay; that the conversion of the premises to a five unit building is

irrefutable given that the CO from DOB, issued on 3/25/98, states this fact; that, at the time of conversion of the premises to a five unit building, there were no tenants in occupancy, so there were no tenants who would be entitled to remain stabilized after such conversion; that any new tenants after the conversion would not be stabilized tenants; that it is indisputable that, when the complainant took possession of her apartment in April of 2015, the premises were a legal five family dwelling and neither her unit nor the building was subject to rent regulation; that the complainant cannot, therefore, now be entitled to a stabilized lease, the owner cannot be forced to issue her a stabilized lease, her rent cannot be frozen, and the owner cannot be forced to file registrations; and that the RA's determination is arbitrary and capricious.

Finally, the owner alleges that, on information and belief, the tenant has erected a wall in the center of her apartment, effectively turning it into two apartments; that the tenant has been renting the unit for short term stays through various websites; that the owner has continuously observed different unknown individuals moving from the rear door of the unit, through the common hallway, and into the front entrance of the apartment to use the bathroom and shower; that the present unlawful configuration of the subject unit does not provide the necessary means of egress in the event of a fire; that the tenant is illegally profiting from her apartment, and is also creating a dangerous situation for her, for her subtenants, and for all occupants of the premises; and that this Agency should not be instrumental in facilitating the tenant's unlawful and dangerous conduct.

While the tenant's attorney, by letter dated October 26, 2022, requested 45 additional days to respond to the owner's PAR, no further submissions were made by the tenant or by the tenant's attorney.

The Commissioner, after careful review of the record, finds that the PAR must be denied.

The RA's Order at issue found that Order ET210030AD, issued on January 3, 2017, determined that the subject housing accommodation is rent stabilized. Order ET210030AD was the subject

of a PAR, which PAR was dismissed on February 17, 2017, by PAR Order FN210006RO. Order ET210030AD is therefore a final Order. While the owner herein seems to be arguing that Order ET210030AD is incorrect, the correctness of said Order may not be collaterally attacked in the instant proceeding.

The owner alleges that it filed a subsequent AD proceeding on June 26, 2018, and that, although the filing was not given a docket number, the Agency, on August 16, 2018, "issued a Request for Form RS-3", and, on September 10, 2018, the owner "complied and delivered the requested forms". There is, however, no evidence to support such allegations. The owner submits documentation showing that a Federal Express package was sent to this Agency on June 27, 2018, and received by this Agency on June 28, 2018, and a copy of a "Request for Administrative Determination" dated June 26, 2018. However, the owner does not submit the alleged Agency August 16, 2018 "Request for Form RS-3" or the owner's alleged September 10, 2018, compliance with that request. Further, it is noted that the two Federal Express shipping documents submitted by the owner for the June 27, 2018, package refer to different tracking numbers, one referencing "Tracking number: 772580030528", and the other referencing "Tracking no.: 772580220603". More importantly, however, is that Agency records show that no AD proceeding was opened in June of 2018, or at any time subsequent to the above-referenced January 3, 2017 AD Order (ET210030AD) relied upon by the RA's Order at issue herein. Accordingly, there is no proceeding after Order ET210030AD that need be considered, or that requires any stay of the instant proceeding.

The owner alleges that the premises are exempt from rent stabilization due to substantial rehabilitation, and/or because there are now five units in the subject premises. However, it is beyond the scope of the instant proceeding to consider allegations of substantial rehabilitation, and the owner is directed to file the proper application should the facts so warrant. Regarding rent stabilization and the number of units in the subject premises, as stated by Order ET210030AD, relied on by the RA's Order at issue herein, "the mere voluntary reduction of housing accommodations from six units to five units subsequent to the base date of Rent Stabilization does not exempt that building from the applicable rent regulations and laws."

Finally, allegations regarding misuse, and/or dangerous use, of the subject apartment by the tenant are beyond the scope of the instant proceeding. The instant proceeding is confined to a determination of the tenant's specific rent overcharge complaint and of the tenant's lease violation complaint. While allegations regarding possible illegal use, and/or dangerous use, of the apartment may not be considered in this proceeding, the owner is advised that it may file an appropriate proceeding(s) in an appropriate forum(s) should the facts so warrant.

THEREFORE, in accordance with the relevant provisions of the Rent Stabilization Laws and Regulations, it is

ORDERED, that this petition be, and the same hereby is, denied.

ISSUED:

FEB 03 2023

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL (DHCR)
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

----------X

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

Pistilli Walton Avenue, LLC

PETITIONER

ADMINISTRATIVE REVIEW DOCKET NO.: KT610013RO

RENT ADMINISTRATOR'S DOCKET NO: GS610049R

TENANT: [redacted]

----------X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The above-named owner filed a timely petition for administrative review (PAR) of an order issued on July 21, 2022 by the Rent Administrator (RA) concerning the housing accommodation known as apartment [redacted] at 1717 Walton Ave., Bronx, NY 10453.

The Commissioner has reviewed all of the evidence in the record and has carefully considered that portion of the record relevant to the issues raised by this PAR.

On July 12, 2018, the tenant filed a rent overcharge complaint, contesting her rent of $1,400 per month. The tenant took occupancy of the subject apartment on May 1, 2015. pursuant to a one-year vacancy lease at a monthly rent of $1,400. The tenant alleged illegal increases to the legal rent from individual apartment improvements, lack of apartment registrations and rent reduction orders.

In answer, the owner denied any overcharge and asserted that the tenant was paying a preferential rent.

On May 3, 2022, DHCR served the owner with Final Notice to Owner – Imposition of Treble Damages on Overcharge based on missing base date rent information and incorrect guideline increases. The owner answered that it gave the tenant a rent credit of $278.72.

The RA determined that the base date for this proceeding was July 12, 2014, the date four years prior to the filing of the complaint; that the base date rent was $1,258.63 per month; that said base date rent was established using the default formula due to the failure to provide base date rental records; that the default calculation was based on the lowest stabilized rent for a similar-sized apartment in the building; that the legal regulated rent upon the tenant's initial

occupancy was $1,488.33 per month; that the tenant was charged a preferential rent of $1,400 per month; that based on DHCR rent freeze order (GT610021B), effective August 1, 2018, the collectible rent was frozen at $1,258.63 per month; that said rent freeze continued as of September 1, 2018 due to another rent freeze order (GT610004S); that the collectible rent remained frozen at $1,258.63 through May 2022 based upon the failure to restore the collectible rent to the legal amount; that there were overcharges totaling $7,901.74 from August 1, 2018 through May 2022; that the overcharges were willful resulting in treble damages of $13,541.56; and that the total owed to the tenant was $21,443.30.

In the PAR, the petitioner contends that the RA's order should be reversed because the RA failed to consider the correct legal regulated rent for the subject apartment as was registered with DHCR in the rent roll report as of April 1, 2014 ($1,920.78) and that the tenant's legal rent rose to $2,271.29 per month on May 1, 2015 and that she was charged a preferential rent of $1,400 per month. In a supplement to the PAR, the owner contested treble damages based on the rent credit issued in the amount of $278.72.

The Commissioner, having reviewed the record herein, finds that the petition should be denied.

The starting point for determining whether there was a rent overcharge is a determination as to the amount of the base date rent, which is the legal regulated rent charged four years prior to the commencement of the overcharge proceeding. See Rent Stabilization Code (RSC) §2520.6(f)(1). See also RSC §2526.1(a)(2)(no award may be based upon an overcharge having occurred more than four years before the complaint was filed and the rental history prior to the four year base date shall not be examined). When an overcharge complaint is filed, the owner of the subject premises is responsible for submitting proof of the base date rent in the form of a lease or a tenant rent ledger in effect on the base date. Here, the base date for the overcharge was July 12, 2014 and the petitioner failed to submit proof of the base date rent. The registered rent roll information is not a substitute for a contemporaneous lease or tenant rent ledger in effect on the base date, and, prior to June 14, 2019, the RA did not have to rely on owner generated rent registration information to determine the base date rent. Pursuant to RSC §2522.6, the RA properly used the default rent formula because the rent charged on the base date could not be determined.

The Commissioner finds that the RA's rent calculations subsequent to the base date were correct, including the reduction of the collectible rent based on the DHCR rent freeze orders. The Commissioner also finds that the RA correctly imposed treble damages. The rent credit purportedly issued by the owner is insufficient to rebut the presumption of willful overcharge herein.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition be, and the same hereby is, denied, and that the Rent Administrator's order is affirmed.

ISSUED:

FEB 06 2023

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW
DOCKET NO.: KT410011RT

RENT ADMINISTRATOR'S
DOCKET NO.: HN410050R

[redacted]

OWNER: 20 EAST 66TH STREET
CORPORATION

PETITIONER X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner-tenant timely filed an administrative appeal (PAR) against the above-referenced Order issued on July 27, 2022, by a Rent Administrator (RA) concerning the housing accommodation known as apartment [redacted] located at 20 East 66th Street, New York, New York, 10065. The RA's Order that is the subject of this PAR determined that the base date for this proceeding is February 7, 2015 which is the date four years prior to the filing of the complaint initiating the instant proceeding; that the base date rent is $2,050.00 per month; that, due to the owner's failure to file annual apartment registrations, the collectible rent is frozen at $2,050.00 per month; that the owner overcharged the tenant; that overcharges and interest on said overcharges total $2,712.50; that the tenant owed the owner arrears accrued from February 1, 2019 to the date of the Order's issuance (July 27, 2022) in the amount of $82,000.00; and that no monies are due to the tenant because the tenant's arrears greatly exceed the rent overcharges and interest.

On PAR, the tenant contends that the RA erred by failing to examine rental events prior to the base date given that the owner willfully committed fraud beginning in 2005 (citing Matter of Grimm v State of New York Div. of Hous. & Community Renewal Off. of Rent Admin., 15 N.Y.3d 358, 938 N.E.2d 924, 912 N.Y.S.2d 491 [2010]); that the rent was registered in 2005 at $0.00; that the apartment was not registered thereafter; that the Housing Stability and Tenant Protection Act of 2019 (HSTPA) permits DHCR to look prior to the base date when an owner has filed fraudulent registrations; that Rent Stabilization Law (RSL) §26-516 (a), as amended by HSTPA, provides that the setting of the legal regulated rent for the purpose of determining rent overcharges shall be based on "the rent indicated in the most recent reliable annual registration...."; that the last reliable registration was filed on or about July 12, 2004 and indicated a legal rent of $500.00 per month; that Gold Rivka 2 LLC v. Rodriguez, 64 Misc. 3d 1228(A), 117 N.Y.S.3d 805 (2019), holds that rental events should be examined as far back as necessary to find the most recent reliable rent

registration in overcharge cases; and that an unexplained increase in the rent alone is sufficient to render a rent unreliable (citing Gold Rivka 2 LLC).

In response to the PAR, the owner asserts that, while it believed that the subject premises were deregulated, the RA ultimately determined that the owner's proof of deregulation was insufficient; that the owner's inability to prove that the apartment was deregulated several years ago does not show owner fraud because the owner provided a plethora of documentations to support its claim; that, in Matter of Regina Metropolitan Co. LLC v. New York State Division of Housing and Community Renewal, 35 N.Y.3d 332, 154 N.E.3d 972, 130 N.Y.S.3d 759 (2020), the Court of Appeals determined that the rent overcharge provisions of HSTPA cannot be applied retroactively, that failure to register an apartment has no relevance to rent overcharge calculations, that if deregulation is not proven then the base date rent is whatever rent was charged on the base date no matter whether the apartment was or was not properly treated as rent stabilized, and that "[F]raud consists of evidence of a representation of material fact, falsity, scienter, reliance and injury...In this context, willfulness means 'consciously and knowingly charg[ing] ...improper rent." (internal Regina citations omitted); that the tenant failed to show that the owner intentionally tried to deceive or defraud the tenant; that the 324 W. 84 Realty LLC v. Ventresca, 2016 NYLJ LEXIS 4955 (2016) Court determined that, even when an apartment has not been registered for nearly 10 years (in that case), when the tenant was not provided riders, and when there were defects in the registrations, the Grimm standard was not found to have been met and the Court refused to examined the rent history prior to the base date; and that the owner's failure to provide rent stabilization riders or deregulation riders is not indicative of fraud (citing .PAR Order AU410029RT/AW410026RO).

In reply to the owner's response, the tenant asserts that the owner failed to issue proper leases in accordance with the RSL and Rent Stabilization Code (RSC); that, if the owner is found to be engaged in a fraudulent scheme to deregulate the apartment, Regina allows the legal regulated rent on the base date to be calculated using the default formula (citing Thornton v. Baron, 5 N.Y.3d 175, 833 N.E.2d 261, 800 N.Y.S.2d 118, 2005 N.Y. LEXIS 1469); that Grimm states that, "...if review of the rental history revealed such a fraudulent scheme, the default formula should be used to calculate any resulting overcharge."; that the documentation submitted by the owner to show alleged individual apartment improvements (IAIs) was insufficient and did not comply with Policy Statement 90-10 (PS 90-10); that the RA's Order does not address the owner's failure to properly register the subject premises prior to 2015, and does not consider the inconsistence in the rent history prior to the base date; and that owner has failed to charge the legal regulated rent for the subject premises since 1996, at which time the owner wrongfully alleged that the apartment was deregulated due to IAI rent increases.

The Commissioner, having reviewed the entire evidentiary record, finds that the tenant's PAR must be denied.

Pursuant to Regina, HSTPA does not apply to overcharge proceedings filed before June 14, 2019. Because the instant proceeding was filed on February 7, 2019, the RA correctly applied pre-HSTPA law. Accordingly, neither the amended RLS §26-516 (a), nor Gold Rivka 2 LLC, which concerned application of HSTPA, apply to the instant proceeding.

Pre-HSTPA RSC Section 2526.1 states that pre-base date rental events may not be examined unless one of the exceptions to such examination apply. One of these exceptions, and the one argued by the tenant herein, is the provision for examination of pre-base date rental events

when there is a fraudulent scheme to deregulate an apartment (see also Grimm). However, a review of the record herein shows that there is insufficient evidence of a fraudulent scheme to deregulate the apartment to warrant examination of pre-base date rental events under the RSC and Grimm. Here, although the owner failed to register the subject apartment since 2005, the owner never registered the apartment as deregulated, and there is nothing in the record showing that the owner ever charged a monthly rent exceeding the deregulation threshold. Further, the owner's failure to register, under the specific facts herein, is not sufficient to support a finding of a fraudulent scheme to deregulate the apartment.

Under the totality of the circumstances, the Commissioner finds that the owner provided sufficient evidence to explain the rent increases prior to the base date. The owner alleges two Individual Apartment Improvements (IAIs), one in 1996, costing roughly $70,000.00, and another one in 2003, costing roughly $30,000.00. It is noted that these IAIs occurred 19 and 12 years prior to the 2015 base date. The owner provided some proof of these IAIs in the form of supplier's invoices, proposals, and a construction contract. The Commissioner finds that this evidence is sufficient given the many years that have passed since the performance of the IAIs at issue, and given that the standard of proof required in such instances is lower than the evidence that is required to show performance of IAIs performed after the base date. Matter of Boyd v. New York State Div. of Hous. & Community Renewal, 23 N.Y.3d 999, 16 N.E.3d 1243, 992 N.Y.S.2d 764 (2014), holds that the Agency need not review every element of an owner's entitlement to IAI rent increases taken before the base date to make a finding on the issue of potential owner fraud. PAR Order IV410015RT, issued in another proceeding, held that IAIs that occurred well before the base date are not examined to determine whether the IAIs at issue fully and properly qualify for IAI rent increases under Policy Statement 90-10, but, rather, are examined simply to see if fraud occurred. It is noted that, under the applicable pre-HSTPA Law, the owner was not required to keep records prior to the February 7, 2015 base date, so it is reasonable to not require the owner to provide full proof of IAIs performed 19 and 12 years prior to this base date. It is further noted that the owner was also entitled to other legal increases in the rent for vacancy and renewal leases, and perhaps for other reasons as well. Given the totality of the above facts and circumstances, the Commissioner finds that the increases in the rent over the years are justified, is not evidence of any fraudulent scheme to deregulate the apartment, and that examination of pre-base date rental events are therefore not warranted due to such increases.

Because there are insufficient indicia of a fraudulent scheme to deregulate the apartment, the RA was correct to find that the rent set forth in the base date lease is the legal base date rent (see Regina). Accordingly, the RA's Order was in no way incorrect and must be affirmed.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that the PAR is denied and that the Rent Administrator's Order is affirmed.

ISSUED

FEB 08 2021

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party, only by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review. The deadline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order. This 60-day deadline for appeal may be extended by executive orders at https://governor.ny.gov/executiveorders. No additional time can or will be given. In preparing your papers, please cite the Administrative Review Docket Number which appears on the front page of the attached order. If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR). With respect to DHCR, your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York, NY 10022.

There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	:	ADMINISTRATIVE REVIEW DOCKET NO. KX110001RO
King's Park 148, LLC.,	:	RENT ADMINISTRATOR'S DOCKET NO. HM110016RP
PETITIONER		TENANT: [redacted]

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The above-referenced owner has filed this administrative appeal (PAR) against an order issued on October 27, 2022 by a Rent Administrator, concerning the housing accommodations known as apartment [redacted] at 148-48 88th Avenue, Jamaica, in which said Administrator has determined that the above-named owner overcharged the tenant.

The tenant filed the underlying complaint on August 1, 2016; it was docketed at number ET110017R. Most recently the matter has been reconsidered at the above-referenced HM110016RP, leading to the instant owner's petition.

The record reflects: that the unchallengeable monthly "base" rent for the subject accommodations is the $1,069.27 that was being collected as of August 1, 2012; that lawful increases brought the rent to $1,090.66 as of June, 2013; that in July, 2013, the owner registered the rent at $1,069.27 as of April 1 of that year; that in June 2014 the owner registered the "legal" rent as $1,390.05 on April 1 and the actual rent paid as $1,090.66 due to "on[-]time discount" (omitting any mention of "preferential" rent on that date); that on July 10, 2015 the owner registered a "legal" rent of $1,497.78 for April 1 and an actual rent paid of $1,135.66 due to "reduction order [and] on-time concession"; that (as stated by the Administrator) "a preferential rent . . . is . . . for the term of the lease and [is] not dependent upon [whether] the . . . payment is

made timely"; that "an owner may only demand a late fee of up to 5% of the rent"; that "since preferential rents may not be terminated during a lease term, an owner [may] not . . . enforce a clause . . . that [allows him to] end a preferential or discounted rent by a certain day"; that an "on-time discounted rent doesn't constitute as [*sic*] a preferential rent[,] making it invalid[,] the preferential rent . . . in the lease becoming the legal regulated rent"; and that "for lease period 06/01/2013 to 05/31/2014 the legal rent is $1,090.66," rising to $1,135.66 for the period running from 06/01/14 through 05/31/16.

The record includes copies of the following leases: (1) dated June 1, 2013, reserving a "Legal rent" of $1,390.05 monthly for twelve months, "Less on time discount pre month $299.39 = Discounted Rent $1,090.66," and providing "if rent is paid [by] the 5th day of each and every month owner . . . will give a . . . discount of $299.39 . . . . for this lease term only" and further providing: "if . . . payment is not timely made[,] the monthly rent shall be the full rental amount reserved in this Lease[,] with the "on[-]time discount discontinued and the tenant being responsible . . . for full regulated rent" (emphasis deleted); "tenant shall pay . . . only . . . by Automatic Debit Payment . . ." and further: If such Payment is cancelled . . . owner . . . will charge full legal regulated rent, and this agreement in no way alters the legal regulated rent, and . . . landlord shall continue to register this apartment at the . . . amount permitted by law"; (2) dated February 19, 2014, "Amended at Tenant's Request For Tenant's Benefit" and executed March 21, reserving $1,497.78 monthly rent for two years with a "Lower Rent to be charged" of $1,135.66, that being the result of an "'on time payment' discount, failing which payment, as above, the tenant will be responsible for said legal rent"; and (3) dated January 29 and executed May 25 of 2016, reserving $1,569.66 per month [rent] for one year and $1,350 preferential (also called "discounted") (including a "concession" of $154.50), and providing that "if the Tenant . . . allows for funds to be paid . . . through [her] bank account and sufficient funds are not available . . . on the 5th of every month, the late fee . . . in the Lease will be assessed."

The Administrator's order, here appealed, states in pertinent part: that the matter has been reopened to take account of *inter alia* the on-time discount, resulting in a finding of additional overcharge because: said discount did not give rise to a

preferential rent since an owner may not terminate such a rent during a lease term; and that the discounted rents were therefore invalid as incorporating excessive late fees while leaving the "preferential" amounts as the legal regulated rents (the aforementioned $1,090.66 and $1,135.66). The resulting overcharges are trebled for the owner's failure to rebut the presumption that they were willful, yielding a liability of $3,915.48.

On PAR, petitioner now argues as follows: 1. "In 2013 the . . . on-time discount clause was VALID[,] the DHCR [having] issued numerous orders affirming [same] during that period of time. The owner treated [same] as . . . preferential . . . in that same was never removed for failure to pay the rent, DHCR having taken years to process this complaint "and now relying on a lease from 2013, that being contrary to DHCR [and] the courts. * * * Furthermore, the [assessment] of treble damages . . . should be rescinded in that the owner should not be penalized for a change of law by the DHCR." The argument is that the agency is not permitted to apply the "recent precedent" first issued by the Appellate Division in December 2021, before which decision there existed no ground on which the agency could ignore the legal rent in a lease and replace it with the rent resulting from applying the on-time discount.

2. No statute or regulation permits this agency to nullify a legal regulated rent because the lease contains an on-time-rent discount. All that matters is "whether the statutory criteria [for] *preserving [said legal] rent while charging a lower preferential* rent [were] satisfied . . . pursuant to . . . [section] 2521.2 of the Rent Stabilization Code" ("RSC"). Those criteria were indeed satisfied.

3. Moreover the owner's aforementioned reliance on the previous rule shows that the overcharges herein were collected without willfulness.

In upholding the Administrator's determinations, the Commissioner finds that the above-described prompt-payment discount does not constitute a preferential rent. The law cites but two kinds of lawful rent: "legal regulated" and preferential. (The cited Code section defines a preferential rent as one "charged to . . . the tenant" in an amount less than the legal regulated rent; here the tenant was "charged" said legal rent, from which charge she could only escape by paying early). Moreover, a preferential rent is invariable throughout the lease term, not depending on anything the tenant does or fails to do. Petitioner has sought to employ a hybrid

rental arrangement, unrecognized by the Rent Stabilization Law or Code, under which the discounted rent can be removed for the entire balance of the lease term. That removable lower rent is not in sum preferential. The Appellate Division, Second Department has affirmed the procedure followed by the Administrator in this matter. See Kings Park 8809 v. New York State Division of Housing and Community Renewal, 200 A.D.3d 959 (2021), Hillside Park 168 LLC, v. New York State of Division of Housing and Community Renewal, 200 A.D.3d 964 (2021) and One Ninety Sixth St., LLC, v. New York State Division of Housing and Community Renewal, 200 A.D. 3d 961 (2021). See also Park Haven, LLC v. Robinson, 45 Misc.3d. 129(A)(App Term 2nd Dept. 2014) (the "lease's rent discount scheme" which was substantially an on-time discount provision is "an unconscionable late charge and penalty"). The Administrator has thus not erred in his finding of liability herein.

Citing no authority, meanwhile, petitioner urges the Commissioner to excuse the assessment of treble damages based on earlier agency determinations that prompt-payment discounts cause no overcharge. However, following a prior procedure regarding charging of the higher rent, which has since been invalidated by the Courts, does not excuse the owner from willful overcharge penalties. Moreover, the Appellate Courts have merely affirmed what the law has always been regarding unlawful discounted rents despite prior incorrect determinations and no new law has been created. With that said, treble damages are grounded on an unrebutted presumption of willfulness which the owner herein has not rebutted.

THREFORE, in accordance with the relevant rent-regulatory laws and regulations, it is

ORDERED that this petition be, and the same hereby is, denied.

ISSUED:
FEB 21 2023

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party, only by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review. The deadline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order. This 60-day deadline for appeal may be extended by executive orders at https://governor.ny.gov/executiveorders. No additional time can or will be given. In preparing your papers, please cite the Administrative Review Docket Number which appears on the front page of the attached order. If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR). With respect to DHCR, your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York, NY 10022.

There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL (DHCR)
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

Chin Cano Realty Corp.

PETITIONER

ADMINISTRATIVE REVIEW
DOCKET NO.:KV410019RO

RENT ADMINISTRATOR'S
DOCKET NO.:FW410044R

PREMISES: Apartment [redacted]
9 Sickles Street
NY, NY 10040

X

TENANT: [redacted]

ORDER AND OPINION GRANTING PETITION FOR ADMINISTRATIVE REVIEW, IN PART, AND MODIFYING RENT ADMNISTRATOR'S ORDER

The owner filed a timely petition for administrative review (PAR) against an order of the Rent Administrator (RA) which was issued on September 14, 2022 concerning the above premises.

In the order under review, the RA found a total rent overcharge in the amount of $1,936.22 ($819.78 overcharge + $829.44 treble + $287.00 interest).

In the PAR , the owner contends that the RA has ruled incorrectly because the overcharges plus interest have been paid and refunded to the city agency which pays the tenant's rent.

The Commissioner has reviewed all of the evidence in the record and has carefully considered that portion of the record relevant to the issues raised by this PAR.

Rent Stabilization Code (RSC) § 2526.1 (a)(1) applies to the treble damage penalty at issue in this case. That is, any owner who is found by DHCR, after a reasonable opportunity to be heard, to have collected any rent or other consideration in excess of the legal regulated rent shall be ordered to pay to the tenant a penalty equal to three times the amount of such excess. However, if the owner establishes by a preponderance of the evidence that the overcharge was not willful, DHCR shall establish the penalty as the amount of the overcharge plus interest, which interest shall accrue from the date of the first overcharge on or after the base date, at the rate of interest payable on a judgment pursuant to section 5004 of the Civil Practice Law and Rules, and the order shall direct such a payment to be made to the tenant.

The record before the RA demonstrates that on December 23, 2020, the owner answered DHCR's Final Notice to Owner – Imposition of Treble Damages on Overcharge by providing a copy of a check issued in the amount of $1,042.96 via certified mail to HRA/DSS (the social services agency that pays almost the entirety of the tenant's rent). Given that both this agency and the courts have considered such a refund given before the issuance of the RA's order as evidence that the overcharge was not willful, treble damages should not have been assessed against the owner in this case.

Interest therefore should have been assessed on the entire overcharge accrued up to the date of issuance of the RA order herein. The RA's Calculation Chart is revised with a total overcharge of $1,326.06 ($819.78 overcharge + $506.28 interest). After applying the refund of $1,042.96 issued to HRA/DSS, the remainder owing is **$283.10**. Based on DHCR procedure, interest and any additional penalties in overcharge cases are payable to the tenant. Therefore, the amount remaining above is payable to the tenant.

THEREFORE, in accordance with the Rent Stabilization Law and Code, it is

ORDERED, that this petition be, and the same hereby is, granted in part; and that the Rent Administrator's order be, and the same hereby is, modified and affirmed as modified.

ISSUED:

FEB 21 2023

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

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- There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL (DHCR)
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

----------X

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO.: KW210020RO
Fortress Rockaway, LLC	RENT ADMINISTRATOR'S DOCKET NO: GX210069R
PETITIONER	TENANT: [redacted]

----------X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The above-named owner filed a timely petition for administrative review (PAR) of an order issued on October 19, 2022 by the Rent Administrator (RA) concerning apartment [redacted] at 416 Rockaway Parkway, Brooklyn, New York which found an overcharge in the total amount of $13,204.39 ($4,938.16 overcharge + $7,563.80 treble damages + $702.43 interest).

The Commissioner has reviewed all of the evidence in the record and has carefully considered that portion of the record relevant to the issues raised by this PAR.

On December 20, 2018, the tenant filed a rent overcharge complaint alleging that the owner had overcharged her from April 1, 2015 to November 30, 2018 because of increases from unsubstantiated Individual Apartment Improvements (IAIs) and Major Capital Improvements (MCIs).

On July 19, 2020, DHCR served to the owner a Request for Additional Information/Evidence, included a request for:

Any claimed IAI costs supported by adequate documentation including:

(a) Canceled check(s) contemporaneous with the completion of the work.
(b) Invoice receipt marked paid in full contemporaneous with the completion of the work.
(c) Signed contract agreement.
(d) Contractor's affidavit indicating that the installation was completed and paid in full.

On August 22, 2022, DHCR mailed to the owner a Final Notice to Owner -Imposition of Treble Damage in Overcharge. The notice stated that the owner failed to calculate the complaining tenant's correct rent. The base date legal regulated rent is $1,052,80 per month

which the owner increased to $1,794.40 per month upon the tenant's occupancy, which was unlawful; and the Final Notice informed the owner to refund to the tenant the total amount of $13,197.81.

Based on the submissions and the record, the RA found that the base date for this proceeding is December 20, 2014, which is four years prior to the filing of the tenant's rent overcharge complaint; that the base date legal regulated rent was $1,052.80 per month; that the complaining tenant took occupancy on April 1, 2015; that her legal regulated rent was $1,244.94 per month based on a 20% vacancy increase added to the base date rent; that overcharges were calculated from April 1, 2015 through June 30, 2022; that treble damages were assessed because the owner has not established that the overcharge was not willful; and that interest has been assessed on the overcharge occurring more than two years before the filing of the complaint.

On PAR, the owner contends that the RA failed to consider the IAIs made prior to the occupancy of the subject tenant. The owner includes a copy of an October 7, 2022 answer which was purportedly filed with DHCR and which included a signed contract with Maldov Contracting LLC, dated January 28, 2015, for a new bathroom in the amount of $11,208.23 and copies of three cancelled checks to Maldov from the owner.

The Commissioner denies this PAR.

Pursuant to Rent Stabilization Code (RSC) §2529.6, review on PAR shall be limited to facts or evidence before the RA. Here, the record before the RA does not show that the owner filed the October 7, 2022 answer with DHCR. There is no record of it in the RA file and the copy provided on PAR has no date stamp (indicating receipt by the agency) and there is no proof of mailing of the answer. Petitioner has not set forth a reasonable excuse for failing to answer the RA notices or otherwise submit relevant evidence of the IAIs in a timely manner. Petitioner had nearly four years after service of the complaint before the RA issued his order to substantiate the tenant's rent increase. Accordingly, the Commissioner will not consider the IAI evidence for the first time on PAR. See Charles Birdoff & Co. v. New York State Div. of Housing and Community Renewal 204 A.D.2d 630, 612 N.Y.S.2d 418 (2nd Dept. 1994)(Commissioner of DHCR could refuse to consider evidence offered for the first time on administrative appeal). The Commissioner further notes that the basis of scope of review is twofold. First, scope of review promotes administrative efficiency in that it mandates that the parties to a dispute set forth all their arguments and supporting evidence to the initial administrative fact-finder, in this case the RA. Second, scope of review prevents the manufacturing of evidence after the parties have had a chance to see the initial administrative determination.

THEREFORE, in accordance with the Rent Stabilization Law and Code, it is

ORDERED, that the petition for administrative review be, and the same hereby is, denied, and that the Rent Administrator's order be, and the same hereby is, affirmed.

ISSUED:

FEB 28 2023

WOODY PASCAL
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

1401 GRAND CONCOURSE LLC.,

PETITIONER

ADMINISTRATIVE REVIEW
DOCKET NO.: KU610016RO

RENT ADMINISTRATOR'S
DOCKET NO.: EP610081R

[redacted]

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner-owner timely filed a Petition for Administrative Review (PAR) of an Order issued by the Rent Administrator (RA) on August 31, 2022 concerning the housing accommodation know as apartment [redacted] at 1401 Grand Concourse, Bronx, NY 10452. Said Order found that the tenant was overcharged in the amount of $8,823.96; that treble damages of $17,647.92 should be imposed on said overcharges; that the owner had issued a refund in of $3,010.44; and that the total due the tenant is $23,461.44. The tenant also filed a lease violation complaint under Docket Number GR410089RV, which was consolidated with the above-referenced overcharge proceeding; said lease violation complaint was, however, rendered moot because the tenant subsequently renewed several leases.

On PAR, the petitioner alleges that the overcharge was improperly issued and was calculated incorrectly; that, from the inception of the tenant's occupancy in 2014 through January 2022, the sum paid by the tenant was $120,981.64, while the legal regulated rent that could have been collected for this period was $117,119.35; that the overpayment is therefore $3,862.29; that the owner issued a refund in the amount of $3,010.44 in April, 2019; that the owner has not charged rent in excess of the legal regulated rent since April of 2019; that the tenant has chosen to overpay her rent which gave the tenant a negative balance as reflected on the rent ledger submitted in evidence; that there has been no willful conduct on the part of the owner; that, since the owner issued the refund in April 2019, it has only charged the tenant

$42,902.31 through January 2022 while the tenant has paid $45,442.73; that the tenant's overpayment is not evidence of an overcharge or of owner's willful conduct; that the imposition of treble damages requires willful conduct; that the owner has provided leases with the proper rent and the fact that the tenant continued to overpay does not constitute willful overcharging on the part of the owner; that imposition of treble damages in this case is a windfall for the tenant and should not be permitted; and that liability for treble damages should not depend on mechanical application of the Rent Stabilization Code (RSC) (citing Round Hill Management Co v. Higgins, 177 A.D. 2d 256 (1st Dept., 1991) and HO Realty Corp. v. DHCR, 46 A.D. 3d 103 (1st Dept. 2007) for the proposition that treble damages are designed to punish owner malfeasance and should not therefore be mechanically applied).

The Commissioner, having reviewed the evidence in the record, finds that the petition must be denied.

Section 2526.1(a)(1) of the RSC provides that overcharges are presumed to be willful and shall be subject to treble damages unless an owner can rebut the presumption of the willfulness of such overcharges. Here, the petitioner has failed to rebut the presumption of willful overcharge and the finding of treble damages is affirmed. Policy statement 89-2 states that an owner can show the lack of willfulness of overcharges, and treble damages will therefore not be imposed, when that owner timely adjusts the rent and submits to the agency proof of a full refund to the tenant of all excess rent collected plus interest. While the owner did in fact make a total refund of $2,945.84 in or before April of 2019, said refund was substantially less than the amount of overcharge collected to that date which was in excess of $8,000.00 plus interest (it is noted that a tenant underpayment of $64.60 was added to the "Refund" credited to the owner by the RA's Order at issue). Further, the owner continued to collect rent overcharges after this date as correctly shown by the RA's Order. Accordingly, the owner did not give the tenant anything close to a full refund of all excess rent collected plus interest and has not rebutted the presumption of the willfulness of the overcharges herein.

The Commissioner finds that owner incorrectly alleges that the total collected by the owner from the tenant during the relevant period was $120,981.64 and that the collectible rent for this period was $117,119.35, resulting in a total overcharge of $3,862.29. The rents collected by the owner, the collectible rents, and the overcharges,

for the relevant period were correctly set forth in the Calculation Chart that is part of the RA's Order, and said Order correctly found that the owner collected $8,823.96 in overcharges from the tenant. Nor is the owner correct in its allegation that the overcharges after the above-referenced April of 2019 partial refund were due to the tenant's overpayment at times when the owner was only charging the correct collectible rent. There are overcharges in the record that occurred after April of 2019 that are a result of excess rent collected under a lease that contained an incorrect and illegally high rent. Further, while overcharges after April of 2019 were a little over $500.00, which is a relatively small portion of the overall overcharges, there is nothing in the record showing that the owner made any attempt to refund said overcharges to the tenant prior to the issuance of the RA's Order in August of 2022.

Because the owner at no time made any refund that was close to a complete refund of excess rents collected (plus interest), because the owner in fact overcharged the tenant all the way to the end of 2021, and because the owner failed to make any further refund after the very partial refund referenced above, the owner has failed to rebut the presumption of the willfulness of the overcharges herein, and treble damages were properly imposed.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition is denied and that the Rent Administrator's Order is affirmed.

ISSUED:
MAR 03 2023

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party, only by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review. The deadline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order. This 60-day deadline for appeal may be extended by executive orders at https://governor.ny.gov/executiveorders. No additional time can or will be given. In preparing your papers, please cite the Administrative Review Docket Number which appears on the front page of the attached order. If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR). With respect to DHCR, your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York, NY 10022.

There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

92 PINEHURST AVENUE LLC,

ADMINISTRATIVE REVIEW
DOCKET NO.: GR410047RO

RENT ADMINISTRATOR'S
DOCKET NO.: EQ410078R

TENANTS: [redacted]

PETITIONER X

ORDER AND OPINION GRANTING IN PART
PETITION FOR ADMINISTRATIVE REVIEW

The petitioner-owner timely filed an administrative appeal (PAR) against an order issued on May 15, 2018 by the Rent Administrator (RA) concerning the housing accommodation known as Apt. [redacted] located at 92 Pinehurst Avenue, New York, NY which granted the former tenants' rent overcharge complaint.

The former tenants took occupancy of the subject apartment on July 1, 2013 and on May 12, 2016 they filed a rent overcharge complaint alleging that their purported preferential rent of $1,750 per month was an overcharge. They further asserted an illegal rent increase based on individual apartment improvements (IAIs) and unlawful deregulation.

The owner answered stating that after the prior tenant vacated at a rent of $1,216.75 per month, the former owner effected $7,965.25 in IAIs entitling the owner to an increase of $132.75 per month along with a vacancy allowance and longevity bonus. The owner stated that the legal regulated rent reached $2,293.32 per month and that the tenants were always charged a preferential rent. The owner provided copies of receipts for PC Richard, Quality Cabinets and Century Supply Corp. The owner also stated that $10,000 paid to the

superintendent who performed the IAIs was not factored into the IAI rent increase.

The RA found that the owner proved $7,649.01 in IAIs and was entitled to increase the rent 1/60th of that amount (or $112.59 per month) when the complaining tenants took occupancy on July 1, 2013. Based on the owner's failure to document all of the supplies, the owner was not entitled to increase the rent by $168.46 per month as claimed. The tenants initial legal regulated rent was $1,701.67 and there was an overcharge commencing July 1, 2013. The total overcharge and interest and treble damages was $16,804.53.

On PAR, the petitioner asserts that $7,965.25 should be permitted for the IAIs; that the overcharge should be reduced and that treble damages should not have been assessed based on the lack of the records from the former owner who reportedly went out of business and also based on the fact that only a small portion of the IAIs were disallowed.

The former tenants opposed the PAR.

The Commissioner, having reviewed the record herein, finds that the petition should be granted in part and the RA order is modified as set forth herein.

The Commissioner finds that the RA properly allowed $7,649.01 based on the invoices and proof of payment in the record. This amount includes $1,989.15 from PC Richard; $3,848.73 from Quality Cabinets and $1,811.03 from Century Supplies. The total invoice summary from Century was $1,963.40, however, the RA properly disallowed $152.37 for a ladder. The Commissioner notes that although an additional check for $917.42 was produced for Century Supply, there is no corresponding invoice to match the payment. The Commissioner also notes that although the check to Quality Cabinets was for $4,148.14, the RA properly allowed the amount of $3,848.73 which matched the invoice of supplies to the subject apartment.

The Commissioner finds that the RA made a mathematical error in calculating the IAI rent increase. Given that $7,649.01 was allowed, 1/60th of that amount is actually $127.48, not $112.59. Therefore, the legal regulated rent and the overcharges will have to be modified.

The Commissioner finds that the petitioner has not rebutted the presumption of willful overcharge. There is no evidence that the property was purchased out of a judicial sale and there is no relief from treble damages by merely purchasing a building from a former owner who goes out of business. Furthermore, while the initial overcharge may have been a result of a small discrepancy in the allowable IAIs, beginning on July 1, 2016 through June 30, 2018, the owner began charging rent far in excess of the legal regulated rent which is not explainable by the IAI difference.

The RA's calculation chart is modified as follows:

Rent Paid	Date	LRR	CR	Explanation
$1,750.00	7/1/13 -6/30/14	$1,716.55	$1,716.55	$1,216.75 + 18% vac + 12.6% longevity + IAI increase $127.48 Overcharge=$33.45 x 12
$1,750.00	7/1/14 -9/30/14	$1,716.55	$1,716.55	Month to Month Overcharge=$33.45 x 3
$1,776.50	10/1/14 -9/30/15	$1,733.71	$1,733.71	Guideline 46 $1,716.55 + 1.0% Overcharge=$42.79 x 12
$1,776.50	10/1/15 -6/30/16	$1,733.71	$1,733.71	Guideline 47 $1,733.71 + 0% Overcharge=$42.79 x 9
$1,900.00	7/1/16 -9/30/16	$1,733.71	$1,733.71	Overcharge=$166.29 x 3
$1,900.00	10/1/16 -6/30/17	$1,733.71	$1,733.71	Month to Month Overcharge=$166.29 x 9
$1,950.00	7/1/17 -2/28/18	$1,733.71	$1,733.71	Guideline 48 $1,733.71 + 0% Overcharge=$216.29 x 8

GR410047RO

Overcharge Amount:	$5,126.14
Treble Damages Amount:	$9,516.38
Interest Amount:	$149.02
Subtotal:	$14,791.54
Total Amount Due Tenant:	**$14,791.54**

The rent is calculated up to February 28, 2018 which was the last rental payment on file with the RA. Interest is assessed on overcharges from July 1, 2013 through May 30, 2014 given that treble damages may not be assessed on overcharges occurring more than two years prior to the filing of the complaint. The legal regulated rent is established as $1,733.71 as of June 30, 2018.

The Commissioner notes that the owner was a respondent in an Attorney General investigation entitled In the Matter of Investigation by Letitia James, Attorney General of the State of New York, of Gotham City Residential Manager, I, LLC, et al. under Assurance No. 21-053. The matter resulted in an Assurance of Discontinuance (AOD), dated July 11, 2022, wherein this owner agreed to reduce labor and other costs related to specific contractors and suppliers. The Commissioner notes that none of the suppliers named in the AOD were involved in the IAIs in this particular matter.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that the petition be, and the same hereby is, granted in part, and that the Rent Administrator's order be, and the same hereby is, modified and having been so modified is affirmed.

ISSUED:

MAR 07 2023

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

_____X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW
DOCKET NO.: KS210003RO

RENT ADMINISTRATOR'S
DOCKET NO.: GX210034R

ELCORNO MARTIN

TENANT: [redacted]

_____PETITIONER X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The above-named petitioner-owner timely filed an administrative appeal (PAR) against an Order issued on May 11, 2022, by the Rent Administrator (RA), concerning the housing accommodation known as Apartment [redacted] located at 327 Eastern Parkway, Brooklyn, N.Y., 11238, which Order denied the tenant's fair market rent appeal (FMRA) and established the fair market rent at $3,439.19 per month. Said PAR was rejected by PAR Order KR210012RO, issued June 24, 2022, because the PAR was defective, and the owner was given an additional 35 days in which to refile a proper PAR. The owner timely and properly refiled its PAR, and the instant Order is the determination of said refiled PAR. The RA's Order at issue determined that, pursuant to Rent Stabilization Code (RSC) §2522.3(e), the fair market rent is established at $3,439.19 per month, and that, because this amount exceeds the $1,950.00 per month initial stabilized rent, the tenant's FMRA is denied.

On PAR, the owner contends that, despite the fact that the RA's Order established the fair market rent at $3,439.19 per month, said Order failed to state that the subject apartment became deregulated pursuant to high-rent vacancy deregulation prior to inception of the complainant's tenancy; and that the apartment should have been deregulated because the established fair market rent of $3,439.19 per month greatly exceeded the then deregulation threshold of $2,700.00 per month.

The Commissioner, having reviewed the entire evidentiary record, finds that the owner's PAR should be denied.

The legal regulated rent as of the inception of the complainant's tenancy in this case was the $1,950.00 per month charged and paid under the complainant's first lease, which rent was set forth in said initial stabilized lease and was also the legal rent registered by the owner with this Agency. While the owner herein argues that the fair market rent of $3,439.19 per month exceeded

the threshold for high-rent vacancy deregulation of the apartment, said rent was not the legal regulated rent, and was, as stated by the RA's Order, simply the fair market rent. Pursuant to RSC §2521:1, when an apartment exits rent control and becomes subject to rent stabilization, as is the case herein, "the initial legal regulated rent shall be the rent agreed to by the owner and the tenant and reserved in a lease...." In the instant case, the rent agreed to by the owner and the tenant herein, the first stabilized tenant after the apartment exited rent control, and reserved in their initial lease, was $1,950.00 per month. This monthly rent of $1,950.00 therefore became the initial legal regulated rent. Pursuant to Rent Stabilization Law (RSL) §26-504.2(a), to deregulate an apartment *under said Section, the "legal regulated rent" must exceed the threshold for deregulation. In this* case, the initial legal regulated rent was, as stated by the RA and as explained above, the $1950.00 per month "negotiated between the owner and the first stabilized tenant". The fair market rent in the instant case was not a legal stabilized rent, but was simply a calculation to see if the actual initial legal stabilized rent of $1,950.00 per month was lawful. As stated by the RA's Order at issue, the fair market rent in this case "exceeds **the initial stabilized rent** for the subject apartment (emphasis added)", and the tenant's FMRA was accordingly denied. In other words, the fair market rent was calculated only to see if the tenant's initial stabilized rent of $1,950.00 per month was lawful, which it was. Because it is uncontested that the initial stabilized rent of $1,950.00 per month did not exceed the threshold for deregulation, the apartment is rent stabilized.

The Commissioner notes that the facts of this case are distinguishable from 326 Starr, LLC v. Martinez, 74 Misc. 3d 77 (App. Term, 2nd Dept 2021), cited by the owner, because in 326 Starr the legal regulated rent exceeded the then deregulation threshold while in the instant case it did *not*.

THEREFORE, in accordance with the applicable sections of the Rent Stabilization Law and Code, it is

ORDERED, that the petition is denied.

ISSUED:

MAR 08 2023

WOODY PASCAL
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

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STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

----------X

IN THE MATTER OF ADMINISTRATIVE APPEAL OF:

[redacted]

PETITIONER

----------X

ADMINISTRATIVE REVIEW
DOCKET NO: LN210002RP

RENT ADMINISTRATOR'S
DOCKET NO: GO210013R

OWNER: Dariusz Zaloga

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The above-named Petitioner-tenant filed a timely Petition for Administrative Review (PAR) of an Order issued by the Rent Administrator (RA) on August 19, 2021, concerning the housing accommodations known as 67 Devoe Street, Apartment [redacted] Brooklyn, NY 11211. The RA's Order that is the subject of this PAR found that all rent adjustments subsequent to the base date have been lawful and that there has been no overcharge. The tenant's PAR was denied by an Order (Docket Number JU210043RT) issued on December 15, 2021. The tenant then filed a judicial challenge against PAR Order JU210043RT pursuant to Article 78 of the Civil Practice Law and Rules, which resulted in a Court Order revoking PAR Order JU210043RT and a remand of the matter to this Agency for further consideration. The instant Order is the determination pursuant to said remand.

On PAR, the tenant alleged that, contrary to the finding of the RA, rent adjustments subsequent to the base date have not been lawful; that the pre-base date rental history should have been examined; that such examination is authorized by Rent Stabilization Code (RSC) Section 2526.1 (as in effect at the time and applicable in this case) and by case law, for the purpose of establishing the existence or terms and conditions of a preferential rent regardless of whether the tenant can or cannot point to indicia of fraud (citation omitted); that owner fraud is also grounds for investigating pre-base date rental events, and is not limited only to fraudulent schemes to deregulate an apartment

(citations omitted); that the owner has failed to maintain the rental history of the apartment immediately preceding the first renewal lease between the parties, which was the inception of the preferential rent beginning in October of 2007, as required by RSC Section 2521.2; that the owner has failed to submit the vacancy rider required by said Section, and has therefore failed to submit an explanation as to how the rental amount set forth in the vacancy lease had been computed; that this is significant because the monthly rent established in the vacancy lease, $1,550.00, was used in the first renewal lease and is the first instance of a preferential rent; that the owner has admitted that it did not maintain records of the individual apartment improvements (IAIs), which means that $102.40 of the vacancy rent remains unaccounted for; and that the tenant maintains that no IAIs were performed and that no rider was attached to her vacancy lease, including the rider mandated by RSC Section 2522.5.

The tenant further alleged that, contrary to the owner's assertion, the first preferential rent was not legal and the owner never properly preserved the legal rent under RSC Section 2521.2, rather engaging in a fraudulent campaign to set the rent and deprive the tenant of the protections of the RSC; that the owner tried, three times (in 2007, 2010, and 2012) to improperly increase the rent using the higher Rent Guideline Board (RGB) increases for the year prior to the year of the leases in question; that the owner tricked the tenant into consenting to these illegal increases in the higher rent, purporting to charge her a preferential rent and thereby disincentivizing her from challenging the owner's illegal conduct; that the tenant's acceptance of these illegal rent increases does not absolve the owner of responsibility and liability, as RSC Section 2520.13 states that an agreement by the tenant to waive any benefit of rent stabilization is void (other citations omitted); and that the failure to offer a renewal lease pursuant to RSC Section 2523.5 does not deprive the tenant of any of the protections of rent stabilization.

Finally, the tenant alleged that the owner seeks to hide behind the rule that generally limits an owner's responsibility to keep records for only four years; that this right only applies to owners who have registered their apartments; that the owner has failed to prove that it properly registered the rent charged on the registration date for 2014 or that it filed a registration for 2016; that the owner has not denied that it failed to maintain the rental history of the apartment immediately preceding the first renewal lease, which was the inception of the preferential rent on October 1, 2007, and has failed to submit

a vacancy rider as required by RSC Section 2522.5(c)(1); that the owner has therefore failed to submit required proof that the amount provided in the vacancy lease was computed based on the most recent registration and on the prior lease; that the owner has not denied that it tried to withdraw the alleged preferential rent three times or that it raised the rent by incorrect and higher prior guideline rent increases; that the owner thereby failed to preserve the higher legal rent and lost the right to charge such rent later in the tenancy; that the RA should therefore have set the rent using the default formula because the base date rent was the product of a fraudulent scheme to deregulate the apartment and because the owner engaged in rental practices proscribed by RSC Sections 2525.3(c) and (d); that, at the least, it should be found that the owner failed to preserve the legal rent and could not withdraw the alleged preferential rent; and that, as the tenant was asked to submit rent records after June 14, 2019, the provisions of the Housing Stability and Tenant Protection Act (HSTPA) should be applied.

Upon careful review of the record on remand, the Commissioner finds that the PAR must be denied.

As a first matter, regarding HSTPA, the New York Court of Appeals issued a determination in the case of Regina Metro. Co., LLC v NYSDHCR, 35 NY3d 332 (2020), in which the Court found that HSTPA does not apply to rent overcharge complaints filed prior to the effective date of such Act, which date was June 14, 2019. As the instant proceeding was initiated on March 7, 2018, HSPTA does not apply to this proceeding and the tenant's allegations regarding how HSTPA affects this matter need not be considered.

In the transcript of the Supreme Court proceeding, leading to the Supreme Court Order remanding the matter to this Agency for the instant redetermination, the Judge stated that DHCR "should reconsider whether or not the default formula should be used...[and] if so, whether or not the determination that there is no overcharge is correct." During said Court proceeding, the tenant's attorney stated that there was sufficient evidence of a fraudulent scheme to deregulate the apartment to warrant investigation of pre-base date rental events, and to use the default formula to set the base date rent in this case. The evidence of fraud alleged by the tenant's attorney was the owner's 1) use of improper guidelines for three renewal leases to charge the tenant illegally high rent increases, 2) twice registering the preferential rent as the legal rent "thereby concealing evidence that it had" improperly used the wrong guidelines in calculating the rents for said

three renewal leases, and 3) failure to provide a vacancy lease rider with the vacancy lease.

In this matter, the four-year base date was March 7, 2014, and the legal rent on the base date was $2,005.23 per month. RSC Section 2521.1 requires owners to maintain, and to submit as required by DHCR, "the rental history of the housing accommodation immediately preceding [a] preferential rent to the present which may be prior to the four-year period preceding the filing of a complaint." In the instant case, since the owner was charging the tenant a preferential rent, the RA properly requested the rental history dating back to the lease in effect before the inception of the preferential rent in order to verify that the rent being charged was indeed preferential and that the owner had in fact properly preserved a higher legal rent. The owner submitted the tenant's 2006 vacancy lease which was the lease preceding the first preferential rent charged. The vacancy lease commencing October 1, 2006 had a stated legal regulated rent of $1,550.00 per month and had no preferential rent. The parties subsequently signed a renewal lease beginning on October 1, 2007, which lease set forth (and thereby preserved) a legal rent of $1,615.88 per month and which also set forth a lower preferential rent of $1,550.00 per month that the tenant would actually be charged for said lease term. So, in essence, a rental history which encompassed eight years prior to the statutory base date was reviewed and it revealed that the owner properly preserved the legal regulated rent in the lease offered when it began charging a preferential rent. The owner also properly preserved the higher legal rent in each subsequent lease until it ultimately and legally decided to discontinue the preferential rent and began charging the legal regulated rent in the lease commencing on October 1, 2015.

Pursuant to the Court's directive and under RSC Section 2526.1, the Commissioner has reviewed the rental history to determine whether there was a fraudulent scheme to deregulate the subject apartment thereby invalidating the base date rent and invoking the use of the default rent formula. The Commissioner finds no such evidence of a fraudulent scheme to deregulate. At no time did the owner offer the tenant a free-market lease, or did the owner treat the apartment as unregulated or did the owner fail to register the apartment. The tenant's allegation that the 2006 vacancy lease did not include a vacancy rider setting forth how the vacancy rent was calculated, and that the vacancy rent was $102.40 above what is accounted for by vacancy and longevity rent increases, is not sufficient to support a finding that the owner was engaged in a fraudulent scheme to deregulate the

apartment. Regarding the vacancy lease rider, there was no requirement that an owner provide a vacancy lease rider in 2006, as such rider only became a requirement pursuant to the 2011 amendments to the Rent Stabilization Code. Regarding the vacancy rent, a jump in the rent, *alone, will not support a conclusion that there has been a fraudulent* scheme to deregulate an apartment. See Grimm v DHCR 15 N.Y.3d 358 (2010). It is noted that the rent set forth in the vacancy lease was $1,550.00 per month, which was well below the then threshold for deregulation and not significantly more than the previous registered rent of $1,167.55 per month. As noted by the tenant, the 2006 rent increase was the result of a vacancy allowance, longevity increase based on the length of the former tenancy as well as a small IAI increase. Given that any relevant IAIs, which would have supported the $102.40 rent increase, were performed over 16 years ago, the owner would not be expected to have documentation regarding them. Indeed, the RSC, as it applied at the relevant time, did not require owners to maintain such records for more than four years prior to the inception of a proceeding, particularly where, like here, the rent increase involving the IAIs did not lead to a deregulation of the subject apartment.

In the Court proceeding leading to this remanded proceeding, the tenant's attorney alleged that the owner twice registered the preferential rent as the legal rent, thereby concealing evidence of illegal rent increases. However, a review of the record reveals that the owner in fact only one time registered the preferential rent as the legal rent, in the 2013 registration. While said registration was for a year and for a lease in which the owner did in fact calculate the guideline rent increases incorrectly, charging guideline rent increases that were too high, the Commissioner declines to find that this single error was part of a fraudulent scheme to deregulate the apartment and/or to hide an incorrect rent increase from this Agency. It is noted that registrations are not reviewed by DHCR unless there is a proceeding requiring such review, so the erroneous setting forth of a preferential rent as a legal rent on one registration does not obscure or hide any other error or possible fraud, as such erroneous statement on a registration will come to light in the context of the overall rent history when and if reviewed pursuant to a proceeding, as it has herein. Accordingly, the Commissioner declines to find that the erroneous setting forth of the preferential rent as the legal rent on the 2013 registration is indicative of owner fraud in this case.

Regarding registrations, while the tenant is correct that the owner used guideline rent increases that were too high in the 2007, 2010 and

2012 leases, the record also shows that the owner made the same error on the 2013 and 2017 leases although these latter two errors used guideline rent increases that were too low. All five of these errors occurred when the owner charged the rent guideline ending on September 30 of a given year for a lease beginning the next day on October 1 of that same year. In other words, the owner used the 9/30/07 guideline rent increases for the lease beginning 10/1/07, the 9/30/10 guideline rent increases for the lease beginning 10/1/10, the 9/30/12 guideline rent increases for the lease beginning 10/1/12, the 9/30/13 guideline increases for the lease beginning 10/1/13, and the 9/30/17 guideline rent increases for the lease beginning 10/1/17. It is noted that the 2017 error resulted in a rent that was $25.57 less than the rent that the owner could have charged if it had used the correct guideline. The fact that there were five errors, all identical in nature, that two of them were in the tenant's favor and three were in the owner's favor, and that it is understandable that the owner might, without any bad intent, use the wrong guideline rent increase when the guidelines changed on the day before commencement of the leases in question, show that the use of the wrong guidelines in several of the leases in the record was simple error and not that the owner was engaging in a fraudulent scheme to deregulate the apartment. As noted, the leases were always rent stabilized, the owner never attempted to state a rent that was in excess of the deregulation threshold, and the owner always registered the apartment.

In sum, pre-base date rental events were reviewed in this matter both to determine the propriety of the preferential rent and, at the Court's direction, to examine whether the owner engaged in a fraudulent scheme to deregulate the apartment. The record reveals that the owner complied with RSC Section 2521.2 on the preferential rent issue and that nothing in the rental history reveals a fraudulent scheme to deregulate. While the owner may have made some errors in the calculation of rent guideline increases on renewal leases executed both before and after the base date, no such errors rise to the level of a fraudulent scheme to deregulate or render the base date rent herein unreliable. The subject apartment is rent stabilized, and the owner has treated it as such than during the tenant's occupancy.

THEREFORE, in accordance with the applicable provisions of the Rent Stabilization Law and Code, it is

ORDERED, that the tenant's PAR is denied.

ISSUED:

MAR 08 2023

Woody Pascal
Deputy Commissioner

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Web Site: www.hcr.ny.gov

Right to Court Appeal

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL (DHCR)
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

----------X

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO.: KX410033RT
[redacted]	RENT ADMINISTRATOR'S DOCKET NO.: IW410023R
PETITIONER	OWNER: Ogden Cap Properties, LLC

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW AND MODIFYING THE RENT ADMINISTRATOR'S ORDER

The above-named tenant filed a timely petition for administrative review (PAR) of an order issued on December 12, 2022 by a Rent Administrator (RA) concerning the housing accommodation known as apartment [redacted] at 205 East 95th Street, New York, NY 10128.

The Commissioner has reviewed all of the evidence in the record and has carefully considered that portion of the record relevant to the issues raised by the tenant's PAR.

This proceeding commenced on November 13, 2020 when the tenant filed a specific complaint of rent overcharge stating that the owner charged illegal fees and/or surcharges and an excessive security deposit. The tenant moved into the subject apartment on November 1, 2015, and she was paying a monthly rent of $1,108.84. The tenant also filed lease violation complaints under docket numbers IW410022RV and IW410020RV, which were consolidated into this rent overcharge proceeding. The tenant submitted various leases and apartment registrations, indicating that she belonged to the Moderate Income Program, and she argued that her apartment has been registered with DHCR as rent stabilized; that her lease from November 1, 2018 to October 31, 2020 proves that the apartment was rent stabilized on January 1, 2019; and that she is protected by the Housing Stability and Tenant Protection Act (HSTPA) of 2019.

The owner answered the rent overcharge and lease violation complaints by stating that its predecessor entered into a Regulatory Agreement with the New York State Housing Finance Agency (HFA) in 1987 which exempted the premises from rent stabilization under Rent Stabilization Law §26-504(a)(1)(b). The owner asserted that the premises was regulated by the Regulatory Agreement under the Private Housing Finance Law and exempt from rent regulation. The owner also argued that even assuming the apartment was regulated by virtue of the owner's

receipt of 421-a tax benefits, those benefits expired in 1998, approximately 17 years prior to the tenant's occupancy. The owner stated that the Regulatory Agreement expired on December 1, 2015; that regulated rent increases continued until 2018 as per the Regulatory Agreement; and that the owner also extended the regulated rent increases until 2019 on its own accord. The owner annexed copies of the Regulatory Agreement and Rental Program Agreement with HFA.

The tenant replied that her leases calculate the rent using the maximum allowable rent stabilization guidelines plus an additional 10% of the previous lease; that irrespective of any owner's agreements in the financing of its building, the owner cannot use rent stabilization guidelines if the apartment is deregulated; that the owner's additional 10% increase to the rent is illegal; and that the prohibition in the lease to sublet or assign to family members is also illegal. The tenant asserted that the Riders to her leases state that once she qualifies as a Moderate Income Tenant under the HFA agreement, "your occupancy . . . shall be subject to the Rent Stabilization Law"; that all of her leases have been rent stabilized and that the owner has registered the apartment with DHCR as rent stabilized up to and including 2020.

The owner submitted a copy of an RA decision under Docket Number IX410023RV which resolved a lease violation complaint in another building owned by the owner at [redacted] which also had been subject to an HFA Regulatory Agreement. On May 26, 2022, the RA found in that matter that the premises was subject to a 1985 Regulatory Agreement and is not under the jurisdiction of DHCR.

The RA, in the instant matter, determined that "the apartment was rent stabilized as per the regulatory agreement" but that the "the subject apartment has been properly deregulated due to high rent vacancy prior to the base date" and that at the time the complainant took occupancy, the subject apartment "was no longer under the jurisdiction of the agency."

On PAR, the tenant contends that her apartment was never deregulated due to high rent vacancy; that the RA agreed that her apartment was rent stabilized; that HSTPA exempts her apartment from deregulation; and that since her apartment is under DHCR jurisdiction since 2015, all her leases should be rent stabilized and be offered on the same terms and conditions as the expiring lease from October 31, 2020. The tenant annexed, amongst other things, a renewal lease commencing December 1, 2020 wherein the owner preserved a legal regulated rent of $4,868.39 per month and charged the tenant a net lower rent of $1,108.84, based on a 10% increase of the previous rent which was higher than the rent guideline increase of 0% on a one-year renewal. The lease rider explained that the rental program period ended on December 1, 2015 and that the owner voluntarily agreed to extend until January 1, 2019 the rent increases described in the Moderate Income Rider which had been annexed to the tenant's original lease.

The Commissioner denies this PAR and modifies the RA order.

The owner's predecessor and HFA entered into a 1987 Regulatory Agreement and

accompanying Rental Program Agreement whereby 20% of completed units in the premises were to be occupied by low or moderate income families. The Regulatory Agreement provided that the owner consented to regulation by HFA. Pursuant to the Regulatory Agreement, the initial rents were determined based on 30% of the tenant's annual income; annual rent increases were not to result in a rent which exceeded said 30% of the income; and owners were permitted to register with DHCR a market rent and the difference between that market rent and what the tenant actually paid was considered a subsidy. The Regulatory Agreement also provided that the owner may issue renewal leases based on the NYC rent guidelines percentages and 421-a increases (2.2%), if applicable, or 30% of any increase in the tenant's annual salary, whichever is higher. The Regulatory Agreement stated that 10% yearly increases would continue for three years after expiration of the program and that upon termination of the rental program there would be no further restrictions on the rents.

Based on the foregoing, the Commissioner finds that the premises was regulated based on the contractual rent in the Regulatory and Rent Program Agreements but was never subject to the Rent Stabilization Law. The tenant took possession of the subject apartment on November 1, 2015 under the auspices of the Regulatory Agreement at a rent based on her initial income eligibility application. As noted above, the Regulatory Agreement expired on December 1, 2015 and the implementation of the increases described in the Moderate Income Rider to the original lease were applied to the tenant's rent until 2019. Thereafter, the Commissioner finds, as per the Regulatory Agreement, the rents are no longer subject to restriction under the rental program. There is also no provision under the Regulatory Agreement or Rent Program Agreement whereby the regulation of the rents would pass to DHCR control. Assuming DHCR did oversee regulation of the rents during the period that the owner was receiving 421-a tax benefits, such benefits expired long before the complainant's occupancy and are not applicable to this case. The fact that the owner registered the premises with DHCR or offered rent stabilized leases, as per the Regulatory Agreement, does not confer jurisdiction onto DHCR. Further, the fact that the lease Riders state that the apartment is rent stabilized do not confer jurisdiction onto DHCR outside of the 421-a tax period, as mentioned above. The Regulatory Agreement indeed dictates certain specific lease language that must be included and never provides that the lease must state that the apartment is subject to rent stabilization.

The Commissioner finds that HSTPA does not apply herein as the apartment was never regulated by DHCR.

The RA's order concerning rent stabilization and subsequent high rent vacancy deregulation was incorrect. The RA order is hereby amended to read in its entirety that "The premises entered into a 1987 Regulatory Agreement with the New York State Housing Finance Agency and is not subject to the jurisdiction of DHCR."

THEREFORE, in accordance with the relevant rent laws, it is

ORDERED, that the petition for administrative review be, and the same hereby is, denied; that the Rent Administrator's order be, and the same hereby is amended, and having been so amended is hereby affirmed.

ISSUED:

MAR 09 2023

WOODY PASCAL
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

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STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

EAST RIVER GROUP, LLC,

PETITIONER

ADMINISTRATIVE REVIEW
DOCKET NO.: KU110008RO

RENT ADMINISTRATOR'S
DOCKET NO.: FN110102R

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely filed an administrative appeal (PAR) against an Order issued on August 12, 2022 by the Rent Administrator (RA) concerning the housing accommodation known as [redacted] located at 34-05 33rd Street, Long Island City, NY, 11106, which Order found a rent overcharge.

The RA's Order at issue found that the base date for this proceeding is February 27, 2013, the date four years prior to the filing of the overcharge complaint; that the base date rent is $1,200.00 per month; that the owner failed to prove that the rent charged the tenant on the base date was a preferential rent; that the lease in effect on the base date did not list two rent amounts (legal and preferential); that, therefore, the rent of $1,200.00 per month charged and paid by the tenant on the base date became the legal regulated rent on the base date; that the owner collected $21,122.58 in overcharges; that treble damages are imposed on the relevant part of said overcharges in the amount of $37,148.52; that interest on the rest of the overcharges totaled $1,897.03; that the total due to the tenant must be reduced by $20,116.65 due to the tenant's rent underpayment for the period from January 1, 2021 through March 31, 2022; and that the total amount due to the tenant is $40,051.48.

On PAR, the petitioner alleges that DHCR has no right to request documentation prior to the four year lookback period (i.e., prior to the base date); that the base date used by the RA is incorrect; that the correct base date is July 1, 2012, the starting date of the tenant's vacancy lease; that, in the lease in effect on July 1, 2012, the

preferential rent amount was written in the monthly rent paid box which proves that a legal regulated rent was established; that the owner used legal regulated rent information from DHCR's April 1, 2012 annual apartment registration record to calculate the legal rent; and that there is no regulation or ruling which allows a preferential rent to become the legal rent when the legal rent is not listed on a lease.

The petitioner further alleges that the tenant had a preferential rent of $1,200.00 per month on July 1, 2012, and that this was not a legal regulated rent; that said preferential rent was documented on the initial lease as it was set forth in the box labelled as 'monthly rent paid'; that a preferential rent is set lower than a legal regulated rent, and there was nothing in said lease stating that the $1,200.00 per month rent was the legal regulated rent; that the owner's November 23, 2020 letter to DHCR explained why the $1,200.00 per month rent was a preferential rent; that the tenant was aware of the legal rent information from the April 1, 2012 annual apartment registration; that all leases and renewals were created pursuant to relevant law and regulations and the tenant did not raise any questions regarding them; and that DHCR has no authority to demand records prior to the base date without a showing of owner fraud (citations omitted).

The petitioner also alleges that the complaint was not sent timely and was sent to the wrong address; that the legal regulated rent was "previously established" under RSC §2521.2(a) because the owner had been registering both a higher legal regulated rent and a lower preferential rent which then allowed the higher legal regulated rent to be used in a renewal lease (citing Matter of Coffina v. New York State Division of Housing and Community Renewal, 18 Misc. 3d 1106(A) (Sup. Ct. N.Y. Co. 2007)); that the tenant's opposition to his preferential rent came too late since the higher legal rent was documented for at least four years; that, under Coffina, the leases and apartment registrations gave notice of the previously established legal rent, which rent could therefore be charged in a renewal lease; that, because of the rent registrations and renewal leases, the tenant had notice of the preferential rent (citing 370 Manhattan Ave., Co. Inc. v. Seitz 20 Misc. 3d 9, 862 N.Y.S.2d 690 (2008) for the proposition that a tenant has notice that a higher legal rent is preserved when the annual registration statements listed both the legal regulated rents and the preferential rents); that the 2012 registration reflects the unit as vacant; and that the 2013 rent registration shows a legal registered rent of $1,549.85 and a preferential rent of $1,200.00.

The petitioner further alleges that the owner cannot be penalized for not establishing a legal rent in the vacancy lease when the June 2012 vacancy lease predated the 2014 DHCR amendments detailing the procedures and requirements for such establishment; that the agency's request to see a copy of the tenant's July 1, 2012 vacancy lease and preferential rent rider was prohibited under Regina Metro. Co. LLC v NYSDHCR, 35 NY3d 332, 349-350, 130 NYS3d 759 (2020); that the agency's request for documentation beyond the four year look back period is in error; that there was no allegation of fraud, and the rents listed on the leases were legal rents; that treble damages cannot be awarded unless there is a specific finding of willfulness, which is intentionally doing an act and knowing that the act is being done (citations omitted); that, if the overcharge resulted from an unintentional ministerial mistake and the overcharge was minor, there was no willfulness (citing PAR Order CM110001RP); that it makes no sense for DHCR to find that the petitioner's actions were willful based on the prior owner's records; that the owner set rent increases based on registrations that it believed were correct and that were accepted by the tenant; that proper rents were reflected in filed apartment registrations and the legal registered rents were documented in forms served on the tenant; and that charging rents based on lawful increases does not evidence any bad intent.

The Commissioner, having reviewed the record herein, finds that the petition should be denied, and that the Rent Administrator's Order should be affirmed.

The Commissioner finds that the complaint was properly and timely served on the owner at an address provided on several letters from the owner and also set forth later by the owner's attorney in its 3/17/21 submission to the RA. Further, a review of the record reveals that the owner and the owner's attorney had full and fair opportunity to be heard before the RA, received all tenant submissions including the complaint, and in fact made several submissions to the RA in this matter.

This proceeding was commenced prior to HSTPA and pre-HSTPA law therefore applies (see Regina). Petitioner has alleged that the RA incorrectly determined the base date for this proceeding. However, the RA did in fact correctly find the base date to be February 27, 2013, the date four years prior to the filing of the complaint pursuant to pre-HSTPA Rent Stabilization Code (RSC) §2526.1(a)(2). It is noted

that the tenant's vacancy lease, commencing July 1, 2012, was in effect on the base date, was therefore part of the post-base date record, and was properly reviewed by the RA.

There was only one rent set forth on the 2012 vacancy lease, and this became the legal rent. When an owner charges and collects a rent below the legal rent to which it might otherwise be entitled, the legal rent is waived down to such lower rent. While the registration for 2012 has a higher legal rent, and the 2013 registration sets forth the $1,200.00 rent set forth on the vacancy lease and a higher legal rent, there is no evidence that either of these registrations were served on the tenant. Further, it is noted that it is highly improbable that the tenant would have been served with any registrations prior to taking occupancy. Nonetheless, there is no showing that the tenant was in fact served with the 2012 or 2013 registrations, so there is no evidence showing that the tenant was on notice of any higher purported legal rent above the $1,200.00 monthly rent set forth in the vacancy lease, which was the only rent set forth on said lease as explained above. The owner therefore did not preserve any legal rent above said $1,200.00 per month rent set forth is the tenant's vacancy lease.

In the cases cited by the owner, Coffina and 370 Manhattan, it was found that service of annual rent registrations upon the tenants gave said tenants notice of the higher legal rents and of the preferential rents in accordance with the provision of the (pre-2014 amendment) law, and that such notice was sufficient to preserve the legal rent while the preferential rent was being charged. In the instant case, as explained above, the owner has offered no evidence that the tenant was given any notice of the preservation of a higher legal rent under his 2012 vacancy lease, either in the lease itself or by timely (prior to the execution of said vacancy lease) service of any registration.

RSC Section 2526.1 states that overcharges are presumed to be willful, and treble damages will be applied, unless the owner can rebut this presumption of willfulness. It is noted that the owner's allegation that willfulness must be shown is incorrect, as, under the Rent Stabilization Law (RSL) and RSC, there is a statutory presumption of the willfulness of overcharges, and it is the owner that must rebut such presumption and not the tenant or the agency that must show willfulness. The owner has not rebutted this presumption in this case.

Petitioner alleges that the overcharges were not willful because they resulted from actions of the prior owner and/or from the current owner's reliance on the prior owner's rent records. Pursuant to RSC §2526.1(f)(2), a current owner is responsible for all overcharge penalties, including penalties based upon overcharges collected by any prior owner, absent special circumstances that do not apply herein. Further, an owner is responsible for knowledge of the correct rent history and legal rents, again, absent special circumstances that do not apply herein. Accordingly, the petitioner may not persuasively argue that the overcharges were not willful because of some act of the prior owner, or based on its reliance on some act of, or information provided by, the prior owner. Because the owner has failed to rebut the statutory presumption of the willfulness of the overcharges in this case, treble damages were properly imposed.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition is denied, and that the Rent Administrator's order is affirmed.

ISSUED:

MAR 10 2011

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

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DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

[redacted]

PETITIONER

ADMINISTRATIVE REVIEW
DOCKET NO. HP210014RT

DISTRICT RENT
ADMINISTRATOR'S
DOCKET NO. DS210107R

----------X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW AND MODIFYING RENT ADMINISTRATOR'S ORDER

The above-named tenant has filed a petition for administrative review (PAR) of an order issued on March 19, 2019 by a Rent Administrator concerning the housing accommodation known as [redacted] 120 East 19th Street, Brooklyn, New York.

The Commissioner has reviewed the evidence in the record and has carefully considered that portion of the record relevant to the issues raised by the PAR.

On July 23, 2015, the tenant filed with the rent agency an overcharge complaint. The tenant commenced occupancy in the subject apartment pursuant to a one-year lease commencing on September 15, 2014 and expiring on September 30, 2015 at a monthly rent of $2,100. The subject tenant alleged that individual apartment improvement (IAI) rent increases were not properly documented, that the owner failed to register the apartment and that there was an unlawful deregulation.

In the order herein under review, including an attached rent calculation chart, the Administrator noted that the base date for this proceeding was July 23, 2011, which was four years prior to the filing date of the overcharge complaint. The base date rent was $738.74 per month. When the tenant took occupancy, the Administrator determined that the rent was $2,010.86 per month based on a vacancy increase, longevity allowance and an IAI rent increase of $932.94. There was an overcharge from September 15, 2014 through March 15, 2018, the date the tenant vacated the apartment. The total overcharge and treble damages were $13,185.45. The legal regulated rent was established at $2,036 per month as of March 15, 2018. With respect to the IAIs, the Administrator found that the owner proved the cost of the installation of new equipment and renovations totaling

$55,976.55 (1/60th of which was $932.94). The Administrator disallowed $6,672.76 in claimed IAIs based on lack of documentation supporting those costs.

On PAR, the tenant alleges that the Administrator erred in allowing IAIs for Dykes Lumber ($2,424.74) and SMC Stone Covering and Fabrication ($1,335.57) because the owner merely offered a credit card authorization form as proof of payment without evidence of the actual transactions taking place. The tenant also alleges that the SMC invoice appears fabricated with the date being changed and no indication of the cost of the tiles nor sales tax amount. The tenant alleges that there is no evidence that the checks written to OVQ Consolidated LLC were cashed and that the owner did not provide an invoice marked paid in full or a signed contract or a contractor's affidavit for this entity.

The owner opposed the PAR by simply stating that the Administrator's order should not be disturbed and that it is prepared to issue a refund check to the former tenant once the matter is resolved.

The PAR is denied, and the Administrator's order is modified as set forth herein.

Pursuant to Rent Stabilization Code (RSC) §2522.4(a)(1), an owner was entitled to a rent increase where there has been a substantial increase of the dwelling space or an increase in services or installation of new equipment or improvements or new furnishings provided in the tenant's housing accommodation on written tenant consent to the rent increase. Where, as here, the apartment was vacant at the time of the IAIs, tenant consent was not required. The owner was entitled to pass on 1/60th of the cost of the improvements to the tenant in a building with more than 35 units. See RSC §2522.4(a)(4). DHCR Policy Statement 90-10, in effect in 2014, provided that IAIs must be supported by adequate documentation which should include at least one of the following: (1) cancelled checks contemporaneous with the completion of work; (2) invoices marked paid in full contemporaneous with the completion of the work; (3) signed contract agreement; or (4) contractor's affidavit indicating that the installation was completed and paid in full.

The Commissioner finds that the owner's evidence presented in this case comported with DHCR Policy Statement 90-10 on the three disputed IAIs.

Dykes Lumber had a two page, itemized invoice which referred to the subject apartment and was dated contemporaneous with the work. The invoice coupled with the credit card authorization is sufficient evidence under DHCR Policy Statement 90-10 to sustain this IAI. The credit card authorization is on Dykes Lumbar stationary, indicates an amount that matches the invoice ($2,424.74), is dated contemporaneous with the work and has the owner's pertinent information including card number, date of expiration and the security code.

The SMC invoice also refers to the subject apartment and is dated contemporaneous withe the work. The invoice adequately describes the materials (tiles) being supplied with

measurements of the tiles themselves and the floor space to be covered as well as the color of the tiles and type of bullnose. The fact that sales tax is not specified on the invoice is irrelevant. The Commissioner finds no apparent fabrication with respect to the invoice. The invoice from SMC coupled with the credit card authorization is sufficient evidence under DHCR Policy Statement 90-10 to sustain this IAI. The credit card authorization is on SMC stationary, indicates an amount that matches the invoice ($1,335.57), is dated contemporaneous with the work and has the owner's pertinent information including card number, date of expiration and the security code. The handwritten change of date from a one day in July 2014 (which is crossed out on the authorization) to 7/15/14 is insignificant.

The evidentiary record contains a signed contract agreement between the owner and OVQ Consolidated Corp., dated June 2014, which is contemporaneous with the IAIs. The contract refers to the subject apartment and gives a detailed description of the scope of the work, including kitchen and bathroom replacement, at a cost of $45,000 which was to be paid in three installments. This signed contract, coupled with the three non-negotiable check receipts totaling $45,000 written on the owner's account to OVQ in June, July and September 2014, were sufficient evidence under DHCR Policy Statement 90-10 for the Administrator to sustain this IAI.

The Commissioner notes that the owner was a respondent in an Attorney General investigation entitled In the Matter of Investigation by Letitia James, Attorney General of the State of New York, of Gotham City Residential Manager, I, LLC, et al. under Assurance No. 21-053. The matter resulted in an Assurance of Discontinuance, dated July 11, 2022, wherein this owner agreed to reduce the labor costs for contractor OVQ Consolidated Corp. by 10% and adjust the legal regulated rent in all properties owned where IAIs were performed during the time period covered, which time period included the time in which the IAIs in the instant case were performed.

Based on the foregoing and in compliance with the Attorney General's Assurance of Discontinuance and to afford the petitioner (a former tenant of the apartment who paid the IAI rent increase) the benefit of the terms of the settlement, the Commissioner will modify the Administrator's order and Calculation Chart.

The Calculation Chart is modified to reflect the following:

The IAI associated with OVQ Consolidated Corp. is reduced from $45,000 by 10% ($4500) to $40,500. The total allowable IAIs in this case are reduced from $55,976.55 to $51,476.55. The allowable IAI rent increase as of September 15, 2014 is reduced from $932.94 to $857.94 (1/60th of $51,476.55). The legal regulated rent is established as $1,935.86 per month as of September 1, 2014, the month the petitioner took occupancy. The legal regulated rent is established at $1,960.06 per month as of March 1, 2018, the last date covered by the RA order.

The Calculation Chart is further modified as follows:

Overcharge Amount:	$7,551.75
Treble Damages Amount:	$15,103.50
Subtotal:	$22,655.25
Total Amount Due Tenant:	**$22,655.25**

Lease Term	Rent Paid	Legal Rent	Overcharge
9/1/14	$1,120.00	$1,935.86	$101.68 x 1 mo. Collectible rent = $1,018.32 Pro-rated as of 9/15/14 (date of occupancy)
10/1/14 – 9/30/15	$2,100.00	$1,935.86	$164.14 x 12 = $1,969.68
10/1/15 – 9/30/16	$2,121.91	$1,935.86 (0% guideline)	$186.05 x 12 = $2,232.60
10/1/16 – 9/30/17	$2,121.91	$1,935.86 (0% guideline)	$186.05 x 12 = $2,232.60
10/1/17 – 2/28/18	$2,148.43	$1,960.06 (1.25% guideline)	$188.37 x 5 = $941.85
3/1/18	$1,039.94	$1,960.06	$73.34 x 1 mo. Collectible rent = $966.60 Pro-rated through 3/15/18 (date of vacatur)

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that the tenant's petition be, and the same hereby is, denied; and that the Administrator's order be, and the same hereby is, modified, and having been so modified is affirmed.

ISSUED:

MAR 14 2023

WOODY PASCAL
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
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---X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW
DOCKET NO.: KU210006RO

RENT ADMINISTRATOR'S
DOCKET NO.: FM210042R

KINYAN HOLDING CORP.,

[redacted]

PETITIONER ---X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner-owner timely filed a Petition for Administrative Review (PAR) of an Order issued by the Rent Administrator (RA) on August 24, 2022, concerning the housing accommodation known as 51 Argyle Road, [redacted] Brooklyn, NY 11218. The RA's Order at issue herein found that the owner collected rents above the legal collectible rents as set forth in his Calculation Chart; that the total overcharge was $3,195.15; and that, including $4,028.58 in treble damages, the total owed to the tenant is $7,223.73.

On PAR, the petitioner asserts that the Housing Stability and Tenant Protection Act of 2019 (HSTPA) does not apply (citing Matter of Regina Metropolitan Co., LLC. v. NYSDHCR, 35 N.Y.3d 332 (2020)): that the treble damages awarded in the proceeding were contrary to established DHCR policy and precedent because the owner proved that the overcharge was not willful; that the owner proved the lack of willfulness of the overcharges by issuing a refund check to the tenant in the amount of $3,635.73 which the tenant claimed was returned to the owner; that the owner did not receive the alleged returned refund; and that there is no basis for finding that the overcharges were willful given that the petitioner gave a full refund of the overcharge plus interest.

In its response to the PAR, the tenant admits receiving the refund check from the owner and depositing said check. The tenant further alleges that she mailed the refund back to the owner via USPS Certified Mail; and that Regina does not apply here because there is an exception to Regina when there is a claim of fraud, and in such instances DHCR may go back more than four years prior to the filing of the complaint

(prior to the base date) in calculating a rent overcharge.

The Commissioner, having reviewed the evidence in the record, finds that the petition must be denied.

First, it is noted that, pursuant to Regina, the RA processed the complaint under pre-HSTPA law, and HSTPA was correctly not applied.

Rent Stabilization Code (RSC) §2526.1(a)(1) provides that overcharges are presumed to be willful and shall be subject to treble damages unless an owner can rebut the presumption of willfulness. Here, the petitioner has failed to rebut the presumption of willful overcharge and the finding of treble damages is affirmed. The petitioner alleges that it rebutted the presumption of willfulness of the overcharges by making a full refund of all overcharges plus interest to the tenant. Policy Statement 89-2 (PS 89-2) states that the presumption of the willfulness of an overcharge may be rebutted "[w]here an owner adjusts the rent on his or her own within the time afforded to interpose an answer to the proceeding and submits proof…" that the tenant has been tendered a full refund of all excess rent collected plus interest. In the instant case, the owner's refund to the tenant was made by check dated April 13, 2022, and the owner did not adjust the rent, continuing to overcharge the tenant even up to and including the month of April of 2022, which was more than five years after "the time afforded [the owner] to interpose an answer to the proceeding" (the complaint was served on the owner on February 16, 2017, and the owner was given 30 days from that service in which to file its answer). The owner did not, therefore, comply with the requirements of PS 89-2, and accordingly did not rebut the presumption of the willfulness of the overcharges in this case. Treble damages were therefore correctly imposed in this case.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition is denied, and that the Rent Administrator's order is affirmed.

ISSUED:
MAR 14 2023

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party, only by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review. The deadline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order. This 60-day deadline for appeal may be extended by executive orders at https://governor.ny.gov/executiveorders. No additional time can or will be given. In preparing your papers, please cite the Administrative Review Docket Number which appears on the front page of the attached order. If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR). With respect to DHCR, your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York, NY 10022.

There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF Houston Housing Development Fund Corp.,	:	ADMINISTRATIVE REVIEW DOCKET NO. KV410035RO RENT ADMINISTRATOR'S DOCKET NO. GR410035R
PETITIONER		[redacted]

ORDER AND OPINION GRANTING PETITION FOR ADMINISTRATIVE REVIEW

The above-referenced owner has filed this administrative appeal (PAR) against an order issued on September 29, 2022, by a Rent Administrator, concerning the housing accommodations known as [redacted] at 273 East Houston Street in Manhattan, in which said Administrator has determined that the owner overcharged the tenant.

The order states: the "base date" herein is June 15, 2014, the tenant's complaint having been filed exactly four years after that; as of July 1, 2014 and for the ensuing 35 months, the tenant was paying the "base legal regulated rent" of $521.52 per month while the "collectible" rent was "frozen" at $492.00 based on a pre-base-date rent reduction order, said freeze yielding an overcharge of $29.52 for each of those 35 months; overcharging then ceased for twelve months, after which the tenant resumed paying said $521.52, yielding a two-month overcharge of said $29.52; an order of May 24, 2019 restored the rent to its "legal" level retroactive to July 1, 2018, removing any overcharge from that date onward; under order 53 of the Rent Guidelines Board no rental increase was authorized, resulting in an overcharge of $5.32 over each of the eight months commencing October 1, 2021. The sum of the aforementioned overcharges being $1,134.80, interest has been added to the portion collected through August of 2018, while the remaining overcharges are trebled "in accordance with the applicable statutes," the owner having failed to establish that same had not been willful. Liability is fixed at $2,447.07

On PAR, petitioner-owner now asserts that no liability—or at least no treble damages—should be assessed. It cites "the Rent Administrator's mistake [as to] how much rent the Tenant actually paid, resulting in a . . . failure to account for refunds made . . . ***BEFORE*** this proceeding was even commenced" (emphasis in original). The owner states that on May 15, 2018, it refunded $1,927.07, followed by an additional $446.42 in September, 2019 (the latter out of "an abundance of caution, after the enactment of the 'HSTPA'"), adding: "[O]ther than through May 2018, the Tenant has always been paying the legal collectible rent. With respect to the period through May 2018, the owner . . . collected a $29.52 rent overcharge, [which] was refunded . . . with interest, prior to the commencement of the proceeding. In fact, the Owner 'over-refunded' . . .. $2,373.49 . . . . considering a base date of May 2018.

"* * * The tenant did not overpay . . . after May 2018, and in fact underpaid rent. * * *

"Given . . . that all overcharges were refunded . . . *prior* to this proceeding being commenced, no treble damages should have been awarded. (Italics in original.) * * *

" . . . Owner refunded . . . prior to even receiving the Tenant's complaint[, having thus taken] all practical steps * * * . . . to make the Tenant whole, before the . . . proceeding was even commenced."

The tenant's answer sets forth in detail petitioner's asserted willfulness, based *inter alia* on the owner's insistence, over a long period in the face of the tenant's accusations, that it was not overcharging. She did not deny receipt of the refund, but states that it was not made in good faith.

The Commissioner finds that the PAR should be granted.

The Commissioner finds that the refund of $1,927.07 was made prior to June 15, 2018, the date of the underlying complaint. This agency has long held that refunds of overcharges plus interest made prior to the time for an owner to answer the complaint satisfy the burden of rebutting the presumption of willful overcharge. As such, treble damages should not have been assessed herein. The total overcharge with interest accruing up to the date of the Administrator's order is $1,796.18, which is less than the aforementioned refund. As such, no monies are owed to the tenant.

The Commissioner finds that any rent arrears is a private matter between the parties and may be resolved in a Court of competent jurisdiction.

THEREFORE, in accordance with the relevant rent-regulatory laws and regulations, it is

ORDERED that this petition be, and the same hereby is, granted, and the Administrator's order is amended to reflect an overcharge with interest in the amount of $1,796.18 and that no money is owed to the tenant based on the pre-complaint refund.

ISSUED:

MAR 14 2023

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

[redacted]

ADMINISTRATIVE REVIEW
DOCKET NO. KX410028RT

RENT ADMINISTRATOR'S
DOCKET NO. GS410069R

OWNER: 207-17 W 110
Portfolio Owner

PETITIONER X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

This is an administrative appeal (PAR) of an order issued on November 21, 2022 by a Rent Administrator (RA) concerning the housing accommodations known as apartment [redacted] at 207 Central Park North in Manhattan which found no rental overcharge.

The tenants took occupancy of the subject apartment on December 20, 2014 pursuant to a market lease expiring March 30, 2016 at a rent of $3,800 per month. The owner offered a rent stabilized renewal lease from April 1, 2017 through March 31, 2018 at a $3,800 monthly rent.

The tenants filed a rent overcharge complaint on July 26, 2018 alleging that from July 1, 1998 through June 30, 2015, the owner was receiving J-51 tax benefits and could not deregulate the apartment under Roberts v. Tishman Speyers Properties LP 13 NY3d 270 (2009). The tenants asserted that the owner failed to register the apartment until 2016, which only happened as a result of a multi-party lawsuit filed against the owner.[1] The tenants asserted that the last registered rent was in 2001 at $2,550 per month and the owner improperly registered the apartment as deregulated despite receipt of the J-51 benefits and in violation of Roberts. The tenants asserted that the

[1] The tenants annexed a copy of a Verified Complaint filed by a number of tenants in the same building seeking rent stabilized status, rent stabilized leases, damages and attorney fees. Mariana Dimitrova Alekna, et al. v. 207-217 West 110 Portfolio Owner LLC, et al.

registered rent in 1995 was $272 per month and that the increase to $2,550 per month in six years must be unlawful. The tenants asserted that the rent should be frozen at $272 per month based on the owner's failure to comply with Roberts and its failure to register the apartment. Alternatively, the tenants asserted that the rent should be established by the default rent formula based on the owner's fraud.

The owner answered that it had purchased the building in April 2016, had adjusted the rents, issued some tenants refunds and registered the apartments. The owner asserted that the complainants were not overcharged because the tenant in occupancy before them was paying $3,600 per month in rent. The owner also asserted that the tenants are not part of the pending lawsuit.

The RA found that the base date for this proceeding was July 26, 2014, the date four years prior to the filing of the complaint. The base date rent was $3,600 per month as per a lease of a prior tenant and the RA found that all rent adjustments subsequent to the base date were lawful. The RA found that the owner had registered the apartment as rent stabilized in all years subsequent to the base date.

On PAR, the tenants annex a 76-page decision in the "Dimitrova" case and a January 2022 letter to the agency stating that there has been a finding of fraud and overcharges for the tenants in the same building. The tenants' counsel requested: "I ask that the agency follow the court's lead."

The PAR is denied.

The Commissioner notes that the tenants were not parties to the "Dimitrova" case, and that the agency is not bound by the findings in that case. The Court in that case analyzed each tenant's situation and rental history and made determinations based on those facts. Indeed, fraud is determined on a case by case basis. Moreover, the Court did not rule on various affirmative defenses raised by the owner.

Under Regina Metropolitan LLC v DHCR, 35 NY3d 332, 130 NYS 3d 759 (2020), the RA in this matter properly set the base date rent at $3,600 per month, the rent in effect on July 26, 2014.

With respect to claims that an overcharge should be calculated based on an alleged fraudulent scheme to deregulate or that the rent should be frozen based on an intervening failure to register, such arguments were all rejected by the Court of Appeals in Regina. The Court noted that rent freezing under Rent Stabilization Law §26-517(e) would not apply in Roberts-type cases where there were registration irregularities which stemmed from a misunderstanding of the law. The Court also noted that the fraud exception to the lookback rule is generally inapplicable to Roberts overcharge claims. Indeed, the former owner herein had a reasonable belief, based upon pre-Roberts agency interpretation of the law, that the apartment was deregulated in 2001 because the legal rent was at least $2,000 per month. Furthermore, increases in rent alone that happened 13-19 years before the base date herein are not reviewable. See Grimm v. DHCR, 15 N.Y.3d 358, 912 N.Y.S.2d 491 (2010)(mere rent increases alone are insufficient to establish a colorable claim of fraud). The Commissioner finds this record is devoid of sufficient indicia of fraud and there was no reason for the Rent Administrator to consider the rental history beyond the four year statutory period. See Boyd v. DHCR, 2014 NY Slip Op. 4806 (2014).

The case of Montera v. KMR Amsterdam LLC 193 Ad3d 102 (1st Dept. 2021), which is cited in "Dimitrova" and which found fraud, is distinguishable from the facts herein in that the owner in Montera specifically attempted to deregulate the J-51 apartment after the Roberts decision was rendered in 2009. Here, the owner registered the apartment as deregulated in 2001, eight years before Roberts. Further, on the issue of the failure to register, the owner's delay in registering until 2016 was not fraudulent given that DHCR did not issue guidance on registering J-51 units until 2016.

The tenants, having cited no specific error by the RA in rendering his decision and no irregularities as to vital matters or errors of fact and law, now

THEREFORE, in accordance with the relevant provisions of the Rent Stabilization Law and Code, it is hereby

ORDERED that this petition be, and the same hereby is, denied.

ISSUED:

MAR 16 2023

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL (DHCR)
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

_____X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

Concord Holdings, LLC

Petitioner

_____X

ADMINISTRATIVE REVIEW
DOCKET NO.: KW610021RO

RENT ADMINISTRATOR'S
DOCKET NO.: GQ610070R

TENANT: [redacted]

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner timely filed a petition for administrative review (PAR) against an order issued on November 8, 2022 by the Rent Administrator (RA) concerning apartment [redacted] at 949 Ogden Avenue, Bronx, NY 10452.

The Commissioner has reviewed all of the evidence in the record and has carefully considered that portion of the record relevant to the issues raised by this PAR.

On May 11, 2018, the tenant filed a rent overcharge complaint alleging that the rent of $1,524.09 charged and collected by the owner on August 1, 2016 was an overcharge.

The owner answered that the tenant failed to state that he is a Section 8 tenant; that on May 11, 2014, the tenant was in the first year of his lease term at a monthly rent of $1,483.30; and that there had been two lease renewals since: 2/1/2016 – 01/31/2018 at $1,524.09, 2.75% increase; and 2/1/2018 – 1/31/2019 at $1,543.14, a 1.25 % increase; and that the Section 8 contract rent for the apartment and the tenant share of rent is as follows:

2/1/14-1/31/15 contract rent of $1,483.30 tenant share $139.00;
2/1/15-7/31/16 contract rent of $1,483.30 tenant share $65.00;
8/1/16-2/28/17 contract rent of $1,524.09 tenant share $260.00;

3/1/17-2/28/18 contract rent of $1,524.09 tenant share $142.00;
3/1/18-3/31/18 contract rent of $1,531.88 tenant share $142.00;
4/1/18-6/30/18 contract rent of $1,531388 tenant share $144.00;

The owner enclosed copies of the Section 8 tenant information, the two lease renewals and the rent ledger.

The RA served the owner on June 21, 2022 with a Final Notice to Owner-Imposition of Treble Damages, stating that the owner failed to comply with a building-wide rent reduction order under Docket Number ET610043B resulting in overcharges from August 1, 2016 through April 30, 2020, in the amount of $13,417.29, including treble damages.

On July 15, 2022, the owner replied that the tenant has never paid more than the monthly legal registered rent of $1,483.30; and that it was not aware of an outstanding order causing an overcharge. On August 23, 2022, the owner reiterated its denial of an overcharge and asserted that a defective lobby camera is not part of the lease and not a requirement for the landlord to maintain.

The RA found that the base date for this proceeding is May 11, 2014, the date four years prior to the filing of the complaint; that the base date rent was $1,483.30 per month; that an overcharge occurred beginning August 1, 2016 based on DHCR Rent Freeze Order ER610043B; that the collectible rent was frozen at $1,483.30 per month based on this rent freeze order and a subsequent one, ET610038B; that overcharges continued through March 2022; and that the total overcharge with treble damages was $13,120.59 (4,472.43 overcharge + 8,648.16 treble).

On PAR, the owner contends that the RA erred in computing the amount of rent paid which resulted in the overcharge. The owner argues that the tenant has not paid more than $1,483.30 per month since April 1, 2016 according to a rent ledger attached to the PAR.

The Commissioner denies this PAR.

The rent ledger submitted on PAR does not match the rent ledger in evidence before the RA. Indeed, the rent ledger that was before the RA showed that more than $1,483.30 was billed during the course of the six year overcharge period. As such, the Commissioner will not consider the new version of the rent ledger submitted for the first time on appeal. The Commissioner finds that, in addition to the rent ledger, the RA also properly relied upon the Section 8 Tenant Profile from the New York City Housing Authority regarding the agreeable billed contract rent. These documents affirm the RA's

findings of rent paid in the RA Calculation Chart. Accordingly, the RA's order was in all respects correct when issued.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is,

ORDERED, that this petition be, and the same hereby is, denied, and that the Rent Administrator's order be, and the same hereby is, affirmed.

ISSUED:

MAR 20 2023

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL (DHCR)
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

----------X

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

[redacted]

PETITIONER

ADMINISTRATIVE REVIEW
DOCKET NO.: LN410012RT

RENT ADMINISTRATOR'S
DOCKET NO: HP410006R

OWNER: Audubon HDFC

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The tenant filed a timely petition for administrative review (PAR) of an order issued on January 31, 2023 by the Rent Administrator (RA) concerning apartment [redacted] at 2612 Broadway New York, NY.

In the order being appealed, the RA found that the tenant filed a rent overcharge complaint requesting a hardship decrease in rent and also stated that his benefits, including those from Section 8, are being denied due to reconstruction of units in his building. The RA advised the tenant to file with the Department of Housing Preservation Development (HPD), the proper agency to determine the tenant's eligibility to receive benefits for the subject unit. The RA found that DHCR does not have jurisdiction over this matter and terminated the proceeding.

On PAR, the tenant requested modification of the RA's order, stating: "appealing judgement for relief (HPD)(N.Y.C.H.A.)."

The Commissioner denies the PAR because the tenant has not raised any basis to modify the RA's order and has not cited to any error of fact or law allegedly made by the RA in rendering his decision. DHCR has no jurisdiction over the tenant's rent benefits.

THEREFORE, in accordance with the relevant Rent Stabilization Law and Code, it is

ORDERED, that the petition for administrative review be, and the same hereby is, denied, and that the Rent Administrator's order be, and the same hereby is, affirmed.

ISSUED:

MAR 20 2023

WOODY PASCAL
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

----------X

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

[redacted]

ADMINISTRATIVE REVIEW
DOCKET NO. GT410007RT

DISTRICT RENT
ADMINISTRATOR'S
DOCKET NO. DT410072R

PETITIONER

----------X

ORDER AND OPINION GRANTING IN PART
TENANT'S PETITION FOR ADMINISTRATIVE REVIEW

The above-named tenant filed a petition for administrative review (PAR) of an order issued on June 28, 2018 by a Rent Administrator concerning the housing accommodation known as Apartment [redacted] at 612 West 144th Street, New York, New York.

The Commissioner has reviewed the evidence in the record and has carefully considered that portion of the record relevant to the issues raised by the PAR.

On August 14, 2015, the subject tenant filed with the rent agency an overcharge complaint. The subject tenant commenced occupancy in the subject apartment pursuant to a two-year lease commencing on December 1, 2011 and expiring on November 30, 2013 at a monthly rent of $1,450.00 per month. The subject tenant alleged that Individual Apartment Improvements (IAIs) were not done in the subject apartment.

On March 28, 2018, the Rent Administrator requested that a physical inspection of the subject apartment be carried out by the rent agency's inspection unit. The Rent Administrator also requested that the inspector should note whether the subject apartment was gut renovated around September 20, 2011. The Rent Administrator pointed out that the owner was claiming $74,000.00 for the cost of the renovations.

The physical inspection of the subject apartment was carried out on May 1, 2018. The inspector's report noted the following: that the bathroom appeared to be renovated; that the kitchen appeared to be renovated; that the hardwood floor appeared to be a new installation; that the apartment entry door was metal; that the electrical stove was a GE; that the microwave was a GE;

that the dishwater was a GE; that three closet doors, one bedroom door and one bathroom door all appeared to have been installed in 2011; that there was a sixty amp main electrical breaker for the subject apartment, and that there was an electrical panel in the subject apartment.

In the order herein under review, including an attached rent calculation chart, the Administrator noted that the base date for this proceeding was August 14, 2011, which was four years prior to the filing date of the overcharge complaint. The base date rent was $946.59 per month. In addition, the Administrator determined that the rent adjustments after the base date have been lawful; that there had been no overcharge; and that the relief requested in the complaint was denied.

On PAR, the subject tenant alleges that the Administrator's order should be revoked "based on a ten-year history of illegal rent increases, with sloppy record-keeping and fraudulent expenses on the part of the landlord"; that prior to the base date, the owner had been raising the rent in excess of the applicable rent guidelines increases; that, also prior to the base date, the owner had been incorrectly calculating retroactive major capital improvements (MCIs) rent increases; that the evidence related to renovations are "general to the building," and it does not substantiate the IAIs cost of $74,000.00; that general contractors' "base charges are usually 10% overhead and 10% profit"; that there is no proof of payment for $40,000; that the cost of changing the apartment's electric panel also includes changing light fixtures from the second through to the sixth floor corridors with customer supplied fixtures; that the cost of the change to the apartment's electrical panel was charged twice; and that there is no permit for the renovation.

In opposition, the owner alleged that the tenant does not show that reviewing the rent beyond the base date would be warranted; that the cost of the IAIs are proven by cancelled checks and credit card payments submitted in the proceeding before the Rent Administrator; that "all expenditures were accounted for in the record below"; that the Rent Administrator determined that the owner paid $74,175.90 for the IAIs; that the "tenant cannot contest the cost of items purchased for IAIs;" and that the IAIs did not require a permit for the renovations.

The tenant's PAR is granted in part and the Rent Administrator's order and Calculation Chart is modified as set forth herein.

The Commissioner notes that there is no dispute that the subject tenant's overcharge complaint had been filed with the rent agency on August 14, 2015. Pursuant to Sections 2520.6 (e), 2520.6(f), and 2526.1 (a)(3)(i) of the Rent Stabilization Code, the Commissioner finds that the examination of the rental history of the subject apartment may not exceed more than four years from the filing date of the overcharge complaint (with limited exceptions which will be explained below).

Based upon the above, the Commissioner notes that the subject apartment's legal regulated rent as of the base date of August 14, 2011 was $946.59 per month. The rent agency's records reflect that the lease period which included the base date expired on November 30, 2011.

Section 2526.1 (a)(2)(iv) of the Rent Stabilization Code sets forth when an apartment's rental history may be reviewed earlier than the base date. The Commissioner notes that this Section states that in an overcharge proceeding, "the rental history of the housing accommodation pre-dating the base date may be examined for the limited purpose of determining whether a fraudulent scheme to destabilize the housing accommodation or a rental practice proscribed under Section 2525.3(b), (c) or (d) of this Title rendered unreliable the rent on the base date." *See also* Matter of Grimm v. State of New York DHCR, 15 N.Y.3d 358 (2010).

In support of a fraudulent scheme to deregulate the apartment, the tenant sets forth allegations of prior improper MCI rent increases and past rent increases in excess of the applicable annual guidelines. The Commissioner finds that none of these allegations are sufficient to pierce the four-year statute of limitations and justify review of such pre-base date rent increases. Indeed, there is insufficient evidence, under a Grimm standard, of a fraudulent scheme to deregulate the subject apartment which would have otherwise rendered the base date rent herein as unreliable. In short, the Commissioner finds that the record is devoid of evidence of fraud which would warrant inquiry into the rental history of the apartment prior to the August 14, 2011 base date. See Boyd v. DHCR, 23 N.Y. 3d 999, 992 N.Y.S.2d 764 (2004)(failure to set forth sufficient indicia of fraud to warrant consideration of the rental history beyond the four-year statutory period). The holding in Grimm specifically noted that a mere increase in rent alone is not indicative of fraud and the mere allegation of fraud, without more, will not be sufficient to require the agency to investigate rents beyond the four-year base date.

The physical inspection of the apartment conducted on May 1, 2018 by the rent agency's inspector verified that the subject apartment was renovated in 2011.

If a tenant complains there has been an overcharge to DHCR, the owner must substantiate the costs of IAIs before the Rent Administrator.[1] Since the tenant brought an overcharge complaint here, the owner must substantiate the expenses related to its claimed IAIs. The owner must prove that the submitted costs arise directly from work that qualifies as an improvement.[2] In order for DHCR to determine the nature of an alleged improvement, the owner is required to submit documentation proving each specific improvement, its costs, and the date of installation as well as proof that the owner actually paid for the improvement.[3] The documentation "must be sufficiently specific to enable the DHCR to verify, by cost breakdown, whether some of the work claimed is merely repairs or decorating for which an increase is not authorized."[4]

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1 See e.g. Jemrock Realty Co. LLC v. Krugman, 18 Misc.3d 15, 853 N.Y.S.2d 450 (App. Term. 1st Dept. 2007), (McCoe, J. dissent); Charles Birdoff & Co. v. N.Y.S. Div. of Hous. & Community Renewal, 204 A.D.2d 630, 612 N.Y.S.2d 418 (2d Dept. 1994)

2 Acevedo v. DHCR 67 A.D.3d 785, 889 N.Y.S.2d 78 (2d Dept. 2008); Linden v. DHCR, 217 A.D.2d 497, 629 N.Y.S.2d 32 (1st Dept. 1995).

3 985 Fifth Ave., Inc. v. DHCR, 171 A.d.2d 572, 567 N.Y.S.2d 657; Yorkroad Assocs. v. DHCR, 19 A.D.3d 217, 797 N.Y.S.2d 60 (1st Dept. 2005); Ista Mgt. v. DHCR, 161 A.D.2d 424, 555 N.Y.S.2d 724 (1st Dept. 1990).

4 Charles Birdoff & Co. v. DHCR, 204 A.D.2d 630, 631, 612 N.Y.S.2d 418, 419 (2d Dept. 1994).

DHCR Policy Statement 90-10 sets forth some standards to be eligible for a permanent rent increase:

> "This policy statement delineates DHCR's processing methods for confirming costs on MCI or individual apartment improvement applications.
>
> Any claimed MCI or individual apartment improvement cost must be supported by adequate documentation which should include at least one of the following:
>
> 1) Canceled check(s) contemporaneous with the completion of the work;
> 2) Invoice receipt marked paid in full contemporaneous with the completion of the work;
> 3) Signed contract agreement;
> 4) Contractor's affidavit indicating that the installation was completed and paid in full.
>
> Whenever it is found that a claimed cost warrants further inquiry, the processor may request that the owner provide additional documentation.
>
> If it is found that there is an equity interest or an identity of interest between the contractor and the building owner, then additional proof of cost and payment, specifically related to the installation, may be requested. Where proof is not adequately substantiated, the difference between the claimed cost and the substantiated cost will be disallowed."

However, submission of such evidence under 90-10 "does not necessarily end DHCR's inquiry, and DHCR may conduct such inquiry as it deems appropriate to determine compliance with the laws it enforces."[5]

The burden of proof is on the owner to justify the claimed rent increase and all relevant invoices, bills, cancelled checks, etc. must be submitted to the Rent Administrator.[6]

Determining whether construction performed in an apartment qualifies as an IAI "necessarily entail[s DHCR's] ... expertise in evaluating the documents ... before it..., and is entitled to deference if not irrational or unreasonable."[7]

Supporting documentation, such as relevant invoices, bills, cancelled checks and/or other material must be submitted to the RA on the initial rent overcharge proceeding. [8]

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5 201 East 8th Street Assoc., v. DHCR, 288 A.D.2d 89, 733 N.Y.S.2d 23 (1st Dept. 2001).

6 985 Fifth Avenue, Inc. v. DHCR, 171 A.D.2d 572, 567 N.Y.S.2d 657 (1st Dept. 1991) and see 9 NYCRR 2529.5

7 Mayfair York Co. v N.Y.S. Div. of Hous. & Community Renewal, 240 A.D.2d 158, 658 N.Y.S.2d 270 (1st Dept. 1997) (Painting, skim coating, partial floor replacement and partial rewiring were disallowed as IAIs because they are merely repairs.)

8 985 Fifth Avenue Inc. v. DHCR, 171 A.D.2d 572. See Waverly Assocs. v. DHCR, 12 A.D.3d 272, 785 N.Y.S.2d 67 (1st Dept. 2004); 201 East 81st Street Assocs. v. DHCR, 288 A.D.2d 89, 733 N.Y.S.2d 23 (1st Dept. 2001); Adria Realty Inc. Assocs. v. DHCR, 270 A.D.2d 416, 704 N.Y.S.2d 51 (1st Dept. 2000).

DHCR is justified in refusing to allow an increase for an owners' failure to submit sufficient documentation. Adria Realty Inc. Assocs. v. DHCR, 270 A.D.2d 416, 704 N.Y.S.2d 51; Ista Management v. DHCR, 161 A.D.2d 424, 555 N.Y.S.2d 724 (1st Dept. 1990).

DHCR must also be given sufficient documentation to determine whether an IAI is an ordinary repair which is not a permitted expense for an IAI increase in rent. [9]

The owner submitted several documents attempting to prove the IAI expenses, including a "renovation checklist." This overview of landlord's claimed expenses was used by the landlord to calculate a total renovation cost of $74,175.90. This is not an invoice from a contractor and does not demonstrate the IAI expenses.

DISALLOWED EXPENSES

The owner submitted a General Contractor invoice from Apical Services, for a total price of $40,000. The invoice lists a scope of work, but there is no break down in price for each item in the scope of work. The invoice also contains duplicative items. One item on the scope of work is for "Supply and install new electrical panel, existing wire to remain." This same expense is also listed on the electrical contractor invoice, as discussed below.

The owner also submitted an invoice provided by LFJ Electric Co., which has a line item #2 stating LFJ Electric Co. was to "Supply and install one electric panel in apartment." This is clearly a double billing by two contractors. Since there is no cost breakdown of the scope of work, there is no way for DHCR to discern the amount of the expense for this duplicate item in each invoice.

The renovation checklist states that LJF Electric, the electrical subcontractor, was paid $20,000. The invoice for LFJ Electric, line item #5, has a charge to "replace all light fixtures on 2nd through 6th floor corridors with customer supplied fixtures." This is a charge for work done outside the apartment and building-wide, and cannot be included in an IAI. There is no line item break down of the labor costs, so the entire charge of $20,000 must be removed from the IAI calculation.

Therefore, the owner has failed to substantiate the expenses for Apical Services and LFJ Electric Co.

The renovation checklist next includes a line item for Lowes expenses of $3,023.44. There are no receipts or substantiation of this expense. The owner presented receipts from Lowes for $45.47 and $46.95, however, it is unclear what actual items these receipts are for and what unit these receipts are for, and therefore cannot be counted. The owner therefore has not substantiated IAI expenses for

9 See 212 W. 22 Realty, LLC v. Fogarty, 1 Misc. 3d 905(A); 781 N.Y.S.2d 629; (N.Y. Civ Ct. 2003) "There is a plethora of case law defining what constitutes ordinary repair, maintenance and decoration as follows: a) partial painting, plastering, and skim coating;... e)refinishing of bathtubs; f) scraping and coating floors with polyurethane;..." (citations omitted).

Lowes and they are disallowed.

Regarding the owner's claimed expenses for Home Depot, $165.49, landlord presents a receipt from Home Depot in the same amount. The receipt is not clear as to what apartment these items were used for, and it is not clear if these expenses are for items related to an improvement that could properly be included in an IAI. This expense is not allowed.

ALLOWABLE EXPENSES

The renovation checklist next includes a line item for Lumber Liquidators of $1,273.86. An invoice indicates delivery and payment of flooring for apartment [redacted] The invoice is marked as down payment provided and credit card information included. This expense of $1,273.86 is allowed.

The owner's renovation checklist next includes a line item amount for SMC Stone, to provide tiles to the subject apartment, of $879.81 and $1,900. A job quote was presented for $879.81, and credit card authorization was provided. An additional job quote for $1,900 for countertop and backsplash installation was submitted, indicating the subject apartment, and a credit card authorization of same was submitted by owner. Therefore, a total amount for $2,779.81 is allowed as an IAI expense.

The owner's renovation checklist next includes a line item amount for Dykes Lumber of $1,489.41. The submitted invoice demonstrated delivery to apartment [redacted] and the installation of cabinets and there was a credit card authorization for proof of payment. Therefore, $1,489.41 is allowed.

The owner's renovation checklist next includes a line item amount for PC Richard. The receipts presented by owner from PC Richard shows the cost is for appliances, labeled for apartment [redacted] and demonstrates payment. Therefore, this is an allowable expense of $1,956.79, as the invoice demonstrates that was the amount paid.

The renovation checklist next includes a line item for JK Windows & Doors. The owner also submitted a proof of payment by check to JK Windows & Doors for $2,592.23 and presents an invoice indicating the order was for apartment [redacted]. These were for replacement of doors, which DHCR's inspection confirmed to have been replaced. This expense is therefore allowed.

The renovation checklist next includes a line item amount for JK Windows & Doors of $952.66. The owner presents an invoice for said work of $952.66. The owner submitted a copy of a check in the same amount. This was for replacement of metal door which was confirmed to have been done by DHCR inspection.

The approved expenses for the IAIs amount to $11,044.76, and 1/60th of the expenses amount to a permissible rent increase of $184.08 per month for IAIs.

DHCR's Deputy Commissioner is aware of a previous investigation of the Office of Attorney General (OAG) and the related Assurance of Discontinuance (AOD) containing the OAG findings. The AOD determined that Newcastle Realty, the managing agent of the subject building and subject apartment during this time period at issue, violated the law and rent regulations. Newcastle solicited kickbacks from contractors and assigned false costs to contract labor associated with IAIs, from the time period between 2008 to 2012. (See AOD, paragraph 10, 17, Assurance No.21-053, in the Matter of Investigation by Letitia James, Attorney General of the State of New York, of Gotham City Residential Manager I, LLC, et. al). Relevant Contractors are defined in the AOD to include Apical Services, a contractor used in this case. (See Exhibit A to the AOD, at page 22).

The general contractor Apical Services is listed in the AOD as one of the contractors held to be in violation of the rent stabilization laws and therefore, the invoices submitted from Apical Services to Newcastle Realty Management Company in this case were highly scrutinized. Further, the IAIs for this subject apartment occurred in 2011, during the covered time period.
It is noted that the owner in the within proceeding acquired the subject building from a previous owner in 2017.

CALCULATION OF OVERCHARGE

The base date in the instant proceeding is August 14, 2011, because the tenant filed her complaint on August 14, 2015. The tenant moved into the subject apartment on December 1, 2011, subsequent to the base date.

The legal regulated rent and collectible rent on December 1, 2011 was $1,410.86 per month, which represents the previous legal regulated rent of $946.59 per month plus a 20% vacancy lease increase, plus a 9.6% longevity increase, plus the allowable IAI increase of $184.08 per month.

From December 1, 2011 to November 30, 2013, the tenant paid $1,450 per month, but the legal regulated rent was $1,410.86 per month, resulting in an overcharge of $39.14 per month for 24 months, totaling $939.36.

From December 1, 2013, to November 30, 2014, the legal regulated rent was $1,467.29 per month ($1,410.86 plus 4% increase as per Rent Guidelines Board order # 45), but the tenant paid $1,525 per month, resulting in an overcharge of $57.71 per month for 12 months, totaling $692.52.

From December 1, 2014 to November 30, 2015, the legal regulated rent was $1,481.96 per month ($1,467.29 plus 1% increase as per Rent Guidelines Board order # 46), but the tenant paid $1,950 per month, resulting in an overcharge of $468.04 per month, for 12 months, totaling $5,616.48.

From December 1, 2015 to November 30, 2016, the legal regulated rent was $1,481.96 per month ($1,481.96 plus 0% increase as per Rent Guidelines Board order # 47), but the tenant paid

$2,150 per month, resulting in an overcharge of $668.04 per month, for 12 months, totaling $8,016.48.

From December 1, 2016 to November 30, 2017, the legal regulated rent was $1,481.96 per month ($1,481.96 plus 0% increase as per Rent Guidelines Board order # 48), but the tenant paid $2,225 per month, resulting in an overcharge of $743.04 per month, for 12 months, totaling $8,916.48..

The total overcharge is $24,181.32. Interest is calculated as $425.35. Treble damages are $46,718.76.

The total amount owed to the tenant is $71,325.43.

The portion of the overcharge from December 1, 2011 to August 30, 2013 is assessed interest only given that treble damages may not be imposed on overcharges occurring more than two years prior to the filing of the complaint. Interest is accrued up to the date of issuance of the Rent Administrator's order (June 28, 2018). Treble damages are assessed on all further overcharges as per the statutory presumption of willfulness. See RSC §2526.1.

The rent is calculated up to November 30, 2017, the last date covered by the Rent Administrator's calculation chart. The legal regulated rent as of that date is $1,481.96 per month. The owner must base all rent increases after November 30, 2017 on that amount and refund any further overcharges collected from December 1, 2017 to present, with interest. The owner is also instructed to amend annual apartment registrations in accordance with the legal regulated rent set forth in this order and on legal rent increases subsequent to November 30, 2017 that are based on the legal regulated rent of $1,481.96.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that the tenant's petition be, and the same hereby is, granted in part; and that the owner is responsible for overcharges, interest and treble damages as set forth herein; and that the Rent Administrator's order is modified as set forth herein.

ISSUED:
MAR 2 2 2023

WOODY PASCAL
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party, only by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review. The deadline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order. This 60-day deadline for appeal may be extended by executive orders at https://governor.ny.gov/executiveorders. No additional time can or will be given. In preparing your papers, please cite the Administrative Review Docket Number which appears on the front page of the attached order. If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR). With respect to DHCR, your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York, NY 10022.

There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW
DOCKET NO.: KU410021RO

RENT ADMINISTRATOR'S
DOCKET NO.: FT410090R

RIVERSIDE STUDIOS, LLC.,

TENANT: [redacted]

PETITIONER X

ORDER AND OPINION GRANTING PETITION FOR ADMINISTRATIVE REVIEW AND MODIFYING RENT ADMINISTRATOR'S ORDER FT41009R

The petitioner-owner timely filed a Petition for Administrative Review (PAR) of an Order issued by the Rent Administrator (RA) on August 25, 2022 concerning the housing accommodation know as apartment [redacted] at 342 West 71st Street, NY, NY, 10023. Said Order found that the tenant was overcharged in the amount of $6,498.24; that treble damages of $12,996.48 should be imposed on said overcharges; and that the total due the tenant is $19,494.72.

On PAR, the owner alleges that the former owner adjusted the tenant's monthly rent and issued a rent refund check in the amount of $7,668.37; that the rent adjustment and the refund were issued within the time to respond to the initial complaint and the owner therefore rebutted the presumption of willfulness of the overcharges and treble damages should not have been imposed; that it relied on information provided by the former owner and their attorneys that no overcharges or treble damages apply pursuant to Policy Statement 89-2 (PS 89-2); that it relied on prior DHCR ruling and precedent holding that there would be no treble damage liability (citations omitted); that the owner proved lack of willfulness of the overcharges under the then current and applicable PS 89-2; that treble damages should not apply retroactively since the complaint was filed in 2017 prior to the Housing Stability and Tenant Protection Act of 2019 (HSTPA) and its amendments; that this case should be decided based on pre-HSTPA law, meaning on DHCR Policy Statement 89-2 and on the Rent Stabilization

Law in effect in 2017; that there is an error in the RA's rent calculation chart because the former owner collected higher rent over a period of 13 months not 14 months as calculated in the RA's calculation chart; and that the previous owner rolled back the rent effective October 1, 2017 and no overcharge was collected on the 14th month as incorrectly calculated and included in the RA's Order.

The Commissioner, having reviewed the evidence in the record, finds that the petition must be granted and the RA's Order at issue must be modified.

First, it is noted that the RA did not apply HSTPA, and that the RA, and the instant PAR Order, both correctly apply pre-HSTPA law. It is further noted that a current owner is responsible for the acts and omissions of prior owners, and, absent specific circumstances that do not apply herein, is responsible for such acts and omissions and for correct knowledge and application of rents and rental histories.

RSC §2526.1(a)(1) as it applies to this case provides that overcharges are presumed to be willful and shall be subject to treble damages unless an owner can rebut the presumption of willfulness. PS 89-2 as it applies to this case provides that the presumption of the willfulness of overcharges may be rebutted, and treble damages will not be imposed, when the owner timely adjusts the rent and gives the tenant a refund of all excess rent collected plus interest.

In this case, it is uncontested that, quite soon after receipt of the tenant's complaint, the owner adjusted the rent and also gave the tenant a refund check for $7,668.37 dated October 10, 2017, which amount was greater than the total of the overcharges plus interest at that time. However, the owner presented no evidence that the check was cashed by the tenant, and this check amount therefore cannot be treated as a refund against the amount due to the tenant. Nonetheless, the uncontested fact that the owner tendered said check to the tenant, while timely adjusting the rent, rebuts the presumption of the willfulness of the overcharges, and treble damages should not have been imposed by the RA.

The award to the tenant is therefore recalculated, without treble damages, and with interest as required by law when treble damages are not imposed, and as follows:

Overcharge Amount:	$6,498.24
Treble Damages Amount:	$ 0.00
Interest Amount:	$3,192.26
Excess Security Amount:	$ 0.00
Total Due Tenant:	$9,690.50

It is noted that, because the owner has not presented proof that the tenant cashed the above-referenced $7,668.37 check, as explained above, the Commissioner cannot make any finding with regard to this amount. However, if said check was in fact cashed by the tenant, the total amount due to the tenant should be reduced by this amount.

It is also noted that, according to the rent ledgers submitted by the owner, the rent was not in fact reduced until November of 2017, and the RA's calculation of the number of months of overcharge, and the amount of overcharge collected by the owner, was accordingly correct.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition is granted, that the Rent Administrator's Order is modified in accordance with this Order, and that the Rent Administrator's Order is, in all other respects, affirmed.

ISSUED:

MAR 23 2023

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL (DHCR)
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW
DOCKET NO.: KX610019RO

Ved Parkash

RENT ADMINISTRATOR
DOCKET NO.: FV610004R

PETITIONER

[redacted]

X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner filed a timely petition for administrative review (PAR) against an order of the Rent Administrator (RA) which was issued on November 10, 2022 concerning [redacted] at 750 Grand Concourse, Bronx, NY 10451.

The Commissioner has reviewed all of the evidence in the record and has carefully considered that portion of the record relevant to the issues raised by this PAR.

On October 2, 2017, the tenant filed a rent overcharge complaint alleging that the owner was charging rent in violation of an outstanding agency rent reduction order. The tenant took occupancy of the subject apartment on September 1, 2015 pursuant to a two-year vacancy lease at a rent of $1,425 per month.

The owner denied any overcharges and stated that the tenant was being charged less than the legal regulated rent for the apartment.

On August 2, 2022, the RA served the owner with a Final Notice to Owner- Imposition of Treble Damages on Overcharge. The Notice informed the owner that based on a prior overcharge order under Docket Number CP610111R which established a rent of $1,200 per month through August 31, 2015 and based further upon six prior rent reduction orders, there would be a proposed overcharge of over $55,000, including treble damages..

In reply to the Notice, the owner stated that five of the rent reduction orders had been restored; that the owner filed a rent restoration application as to the remaining order (EP610033B); that said order dealt with an intercom system that has already been repaired; and that an agency inspection

found the intercom service in the subject apartment was "maintained."

In the order under review, the RA found a total rent overcharge in the amount of $53,291.68 ($17,966.58 overcharge + $35,033.16 treble + $291.94 interest). The overcharge commencing on September 1, 2015 was due to the freezing of the collectible rent at $1,200 per month based on three rent reduction orders in effect at that time. A fourth rent reduction order was applied on July 1, 2016 (EP610033B); a fifth on February 1, 2017 (EQ610039B); and a sixth on November 1, 2017 (FU610215S). The RA noted that during the calculation period, five rent restoration orders had been issued. However, the collectible rent remained frozen at $1,200 per month through November 2021 based on outstanding rent reduction order EP610033B, which had not been restored.

On PAR, the owner contends that the RA erred in assessing treble damages. The owner contends that it has filed a PAR against the denial of its rent restoration application filed with respect to EP610033B. The owner contends that any overcharge was not willful based on genuine confusion regarding the hyper-technical calculation of the collectible rent. The owner contends that there were overlapping issues regarding the rent restoration orders that were granted and that the owner reasonably believed that it could restore the rent based on those orders. The owner argues that it applied two rent credits to the tenant's account; did not take the 20% vacancy increase at the outset of the tenancy and diligently acted to restore services, all of which was evidence of good faith and rebuts any willful overcharge presumption. The owner relies on DHCR Policy Statement 89-2 and PAR Docket Nos. GO410009RO/GN410052RT wherein the owner contends that the agency found that the owner's actions of restoring the rents was evidence of non-willfulness.

The Commissioner denies this PAR.

Under Rent Stabilization Code (RSC) §2526.1 (a)(1), rent overcharges are presumed willful and subject to treble damages. However, if an owner establishes by a preponderance of the evidence that the overcharge was not willful, DHCR shall establish the penalty as the amount of the overcharge plus interest. As per DHCR Amended Policy Statement 89-2, the burden of proof in establishing lack of willfulness shall be deemed to have been met and therefore the treble damage penalty is not applicable in some situations, such as:

(1) Purchase of a building at a judicial or bankruptcy sale where no records to establish the legal regulated rent were available;
(2) Where an owner adjusts the rent on his or her own within the time afforded to furnish DHCR with an initial response when served with the overcharge complaint initiated by the tenant, and submits proof to DHCR that he or she has tendered in good faith to the tenant a full refund by check or cash of all excess rent collected, plus interest as provided by CPLR Section 5004. Refunds tendered after the initial period in which to respond will be viewed in conjunction with other evidence to determine the issue of willfulness; and
(3) Where the overcharge is caused by the hyper-technical nature in computing the rent and the owner has not been previously put on notice of the technical nature by DHCR.

The Commissioner finds that the owner has not rebutted the presumption of willful overcharge herein.

The application of six rent reduction orders which were fully explained to the owner in the Final Notice to Owner- Imposition of Treble Damages on Overcharge, which was served before the RA order was issued, is not a hyper-technical issue in rent computation. Indeed, each rent reduction order specifically defines the rent freeze and effective date of same. Moreover, an owner is responsible for maintaining the services which lead to the reduction order having been issued. The fact that the owner has an outstanding PAR of the denial of his latest rent restoration application as pertaining to rent reduction order EP610033B has no bearing on the application of this outstanding rent reduction order in the RA's rent calculations, and nor should the aforementioned PAR serve as a basis to delay the underlying overcharge proceeding. It is important to note that the rent reduction order (EP610033B) itself was not appealed and is a final agency determination on the reduction of the rent due to the lack of service, and said lack of service may not be disputed herein. The owner has been well aware of the outstanding rent reduction order having filed a number of rent restoration applications concerning it. Further, the fact that the owner restored five of six rent reduction orders does not rebut the presumption of willful overcharge.

The fact that the owner charged less than the vacancy rent and gave two rent credits ($925.00 and $706.00) throughout the rent calculation period is not evidence of lack of willfulness. The refunds do not comport with DHCR Amended Policy Statement 89-2 as they do not represent a full refund of the overcharges and interest herein.

The consolidated PARs cited by the owner (GO410009RO/GN410052RT) are inapposite. The owner in those matters gave a substantial rent credit to the tenant and significant refund to SCRIE and restored the services and was issued a rent restoration order prior to the issuance of the RA's overcharge.

The Commissioner has considered all remaining claims by the owner and finds them to be without merit.

THEREFORE, in accordance with the Rent Stabilization Law and Code, it is

ORDERED, that this petition be, and the same hereby is, denied; and that the Rent Administrator's order be, and the same hereby is, affirmed.

ISSUED:

MAR 23 2023

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

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STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW
DOCKET NO.: KT410034RO

RENT ADMINISTRATOR'S
DOCKET NO.: FU410012R

57-63 WADSWORTH, LLC.,

TENANT: [redacted]

PETITIONER X

ORDER AND OPINION GRANTING IN PART PETITION FOR ADMINISTRATIVE REVIEW AND MODIFYING RENT ADMINISTRATOR'S ORDER

The petitioner-owner timely filed a Petition for Administrative Review (PAR) of an Order issued by the Rent Administrator (RA) on July 27, 2022 concerning the housing accommodation know as apartment [redacted] located at 57 Wadsworth Terrace, New York, NY 10040. Said Order found that the tenant was overcharged in the amount of $918.11; that treble damages of $1,690.76 should be imposed on said overcharges; and that the owner refunded $316.64 to the tenant leaving a total amount due to the tenant of $2,292.23.

On PAR, the petitioner alleges that the RA's calculations on the his calculation chart where incorrect; that the petitioner was entitled to collect a $72.73 MCI increase as of August 1, 2015 but did not start collecting said increase until September of 2015, so the owner correctly charged the tenant $145.46 ($72.73 x 2) as they were entitled to and the RA incorrectly found a 72.73 overcharge in September; that the petitioner was entitled to apply a second MCI increase of $72.73 on August 1, 2016 but was not entitled to collect said increase until the rent was fully restored on August 1, 2017; that on August 1, 2017, the collectible rent should have become $1,462.24 ($1,322.97 + 8/1/16 MCI Increase of $72.73 + 8/1/17 MCI increase of $66.54) but the RA's calculation only credits the first of these MCI rent increases and therefore incorrectly states that the collectible rent is $1,395.70 at this time; that the petitioner only charged the tenant $1,297.03 for the months of August, September, October, November and December of

2017 even though it was entitled to collect $1,462.24; that this was due to the fact that the Order restoring the rent was not issued until December 14, 2017 while being effective on August 1, 2017; that for the rental period of August through December 2017, the tenant accordingly underpaid by $165.21 per month, and these underpayments were incorrectly not mentioned in the RA's Order; and that, based on its calculations, the tenant was not overcharged but was, in fact, in arrears in the amount $638.71 for the relevant period.

In its response to the PAR, the tenant alleges that the petitioner was aware of the rent reduction Order in place which was evidenced by its applications to restore rent in April of 2016, January of 2017, and June of 2017; that all rent restoration applications were filed prior to the tenant filing his overcharge complaint; that, even after receiving two Orders denying rent restoration, the petitioner refused to charge the reduced rent; that the overcharge was willful; that the alleged rent adjustments and refunds do not rebut the presumption of willfulness; that the petitioner charged the tenant a higher rent for almost a year and a half after knowing there was a rent reduction Order in place; that the petitioner continued to charge higher rents while simultaneously filing rent restoration applications; that the petitioner did not correct its rent ledgers and did not begin to charge the correct reduced rent until the tenant filed his overcharge complaint; that, according to the tenant's calculations, the tenant is entitled to $5,866.78 in overcharge, treble damages and interest; that the RA correctly found that the tenant was willfully overcharged; that the petitioner's rent ledgers contain inconsistent accounting and the tenant is not in arrears of $638.71; and that accounting evidence submitted shows inconsistent monthly accounting and that the owner continues to seek overcharges from the tenant, calling the trustworthiness of the owner into question.

The Commissioner, having reviewed the evidence in the record, finds that the petition must be granted in part and that the RA's Order at issue must be modified.

First, it is noted that the rents paid as set forth in the RA's calculations correctly reflect the rents paid as shown by a rent ledger submitted by the owner. However, the RA's calculations of MCI rent increases, of collectible rents, and of overcharges and treble damages are, in some instances, erroneous and must be modified to reflect the correct calculations.

The MCI rent increase of $212.00 due to MCI Order BU410022OM was properly added to the Legal Regulated Rent (LRR) as of 7/1/15, and $72.73 of this amount was collectible (due to the statutory 6% annual cap on MCI increases) and was added to the Collectible Rent (CR) as of 8/1/15 as correctly found by the RA. Contrary to the owner's allegation, the owner began collecting this $72.73 increase in the CR as of 8/1/15, and collected an additional $72.73 in September of 2015. The overcharge of $72.73 for September of 2015 as found by the RA was therefore correct. The RA's calculations remained correct until 8/1/18, as the guideline increases, the rent freeze and rent restoration, and the addition of the second $72.73 attributable to MCI Order BU410022OM to the CR were correctly calculated; it is noted that the RA properly did not add any MCI increase to the CR on 8/1/16 because there was a rent reduction Order in effect barring such addition. The owner overcharged the tenant $70.19 for each of the nine months from 11/1/17 to 7/31/18, as correctly reflected by the RA's calculations. From 8/1/18 to 5/31/19, however, the RA incorrectly found that the CR and the LR were not the same, which they were during this time due to rent restoration Order GM410143OR and to the fact that, as of 8/1/18, all MCI rent increases due to MCI Order BU410022OM were collectible. Accordingly, the RA's calculations of the CRs are modified to show that, from 8/1/18 to 5/31/19, the CRs are the same as the correctly set forth LRRs, and the RA's calculations are further modified to show that there were no overcharges from 8/1/18 through 5/31/19. Order GM410084OM authorized a $34.04 increase effective 6/1/19. The CR had, however, already been increased by $66.54 pursuant to MCI Order BU410022OM as of 8/1/18 (the balance of the $212.00 MCI increase under Order BU410022OM), and the statutory 6% annual cap on MCI increases for the year from 8/1/18 to 7/31/19 was $89.00. The CR for the months of 6/1/19 to 7/31/19 was therefore $1,542.88 per month, reflecting the prior CR of $1,520.42 per month plus the $22.46 allowable from MCI Order GM410084OM ($66.54 from Order BU410022OM effective 8/1/18 plus $22.46 from Order GM410084OM = $89.00 which was the statutory annual 6% cap from 8/1/18 to 8/1/19). The owner charged the tenant $1,554.46 for these months (6/1/19 to 7/31/19), when the CR was $1,542.88, as explained above, so the tenant was overcharged $11.58 for each of these two months. As of 8/1/19 the balance of the MCI rent increase attributable to Order GM410084OM became part of the CR and the CR should be modified to reflect that it is the same as the LRR from 8/1/19 until the end of the time covered by the RA's Order; further, as the owner did not collect more than this CR from 8/1/19, no overcharges are found for this period. It is noted that the LRR

(and the CR) for the period from 11/1/21 through 10/31/23 is $1,589.49 because, when the owner charges less than the amount to which it is otherwise entitled, the LRR is waived down to that lower amount.

The award to the tenant is therefore recalculated as follows:

Overcharge Amount:	$727.60
Treble Damages Amount:	$1,455.20
Interest Amount:	$ 0.00
Excess Security Amount:	$ 0.00
Subtotal	$2,182.80
-Refund	$316.64
Total Due Tenant:	$1,866.16

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition is granted in part and that the Rent Administrator's Order is modified as set forth herein, and as so modified is affirmed.

ISSUED:
MAR 2 9 2023

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
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Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party, only by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review. The deadline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order. This 60-day deadline for appeal may be extended by executive orders at https://governor.ny.gov/executiveorders. No additional time can or will be given. In preparing your papers, please cite the Administrative Review Docket Number which appears on the front page of the attached order. If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR). With respect to DHCR, your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York, NY 10022.

There is no other method of appeal.